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Arkansas's Divided Democracy: The Making of the Constitution of 1874

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Arkansas's Divided Democracy: The Making of the Constitution of 1874

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy in History

by

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Abstract:

This dissertation examines the making of Arkansas's constitution of 1874, which drew the curtain on Reconstruction in the state and remains in force in the twenty-first century. It contributes to the scholarship of Arkansas history, Southern history, and U.S. political and constitutional history by showing that Arkansas's Redeemers were not unified or homogeneous, but rather a fractured group who fought about how restrictive the state's new constitution would be. In the end, it was more generous in some sections than some Democrats wished. This dissertation, thus, challenges a traditional narrative of a likeminded convention and relentlessly restrictive constitution-making. However, it also shows delegates partook of political and constitutional trends present in the North and West as well as in the South, demonstrating that Redemption was part of a larger political current rather than simply a regional political reaction to the perceived and real abuses of Reconstruction.

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Acknowledgments:

This dissertation stems from dual commitments made by my parents. The first is a commitment to education. This, in part, stems from an unusual legacy of education. In fact, I am a fourth-generation educator. My great-grandfather and my grandmother both taught school in one-room schoolhouses in rural northeast Arkansas. While neither achieved a college degree, they both obtained a significant number of college credits at a time when such education was far from the norm. Both my parents continued this tradition—both earning graduate degrees in education and spending their careers in public education. The second commitment involved the exploration of history. My dad taught high school history and English. Our family vacations revolved around long summer road trips to historical sites. If there is a plantation to visit, I have been there. These trips led to questions about Reconstruction, Redemption, and civil rights.

I would like to thank the librarians and archivists who have assisted my work in untold ways. I would like to single out the staff of the Special Collections Department at Mullins Library at the University of Arkansas in Fayetteville as well as the interlibrary loan staff at Mullins who found obscure and remote items for my use. I would also like to thank the staff at the Arkansas State Archives in Little Rock for all of their assistance.

I owe a special debt of gratitude to Dr. Patrick Williams who served as a mentor and advisor. He read countless drafts and offered few complaints even when he found the organization of my ideas baffling at times. Dr. Williams helped me hone my ideas and develop a clear thesis for this project. He also saved me from numerous mistakes along the way. I would also like to thank the members of my dissertation committee, Dr. Jeannie Whayne, Dr. Janine Parry, and Dr. Michael Pierce who provided guidance and encouragement along the way. I would be remiss if I did not single out Dr. Jim Gigantino who took me under his wing when I got

to the University and nurtured my writing ability. He went above and beyond for someone who was not to be his PhD student.

There are two professors, Dr. Lorien Foote (who is now at Texas A & M but served as my mentor and directed my master's thesis at the University of Central Arkansas) and Dr. Wendy Castro who served as the Graduate Director at the University of Central Arkansas prior to becoming the chair of the History Department. These two were not only mentors but remain dear friends. My fellow doctoral candidate Misti Harper deserves special thanks for the many lunches where I was allowed to vent my frustrations as well as for being a constant friend through both our master's program and our time at Arkansas.

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Special thanks goes to my wife Kristi who read as many drafts as Dr. Williams and saved me from an equal number of mistakes. She and I have known each other since the second grade and she stood by me when few people thought I would ever finish one degree, let alone three. She has supported me both financially and emotionally through this process. Most of all I want to thank her for not running away when I told her I wanted to quit work and go back to school.

I dedicate this dissertation to my sons, Trae and Will. Most people thought I was crazy when I adopted two boys while working on a PhD. I would be lying if I said that it hasn't been hard, but they have also brought me much joy and provided a reason to forge ahead with this project.

Dedication

This dissertation is dedicated to my wife, Kristi, and my sons Trae and Will.

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Chapter 1

Introduction

On November 26, 1868, Gov. Powell Clayton addressed the Arkansas General Assembly. The state, he said, was in the grip of “civil commotion.” Opposition to the Republican-led government had grown, and he had no choice but to take action, saying, “The fearful history of the last few months, with its dark catalogue of crimes committed, will, in all probability, never be entirely disclosed.” In Ashley County, Moses Dean, a freedman, and his wife had been hanged and another freedman had been shot while hauling cotton to market. In Columbia County, white citizens had impeded the work of the appointed election registrars and tax collectors. A freedman, Aaron Hicks, had been murdered at a town barbeque. The governor claimed that Hicks had been killed for nothing more than being a union man while white leaders in Columbia County claimed that he had boasted to white men that he would take their land. In Lafayette County, multiple freedmen were killed and in Sevier, the sheriff barely escaped death in his own home. In Monroe County, a Democrat assassinated Congressman James M. Hinds and in Crittenden County, six men were killed in ten days. Clayton declared martial law to put a stop to what he saw as a rebellion.¹ Conservative white opponents of the Republican regime would, in fact, not be shy about using violence to thwart Reconstruction. However, they would win a more enduring triumph over Reconstruction by mustering their vote and rewriting the state’s organic law in 1874.

¹ “Governor’s Message,” *Daily Arkansas Gazette* (Little Rock), November 26, 1868.

This dissertation is about a constitutional convention that, in the literature of Arkansas history and politics, barely exists. However, its work would shape government in Arkansas in the long term. While much amended, the Constitution of 1874 has never been replaced. Yet this convention is significant not only for its impact on the state, but what it reveals about Redemption across the South and Gilded Age constitution-making more generally. This dissertation builds on the work of others who have challenged the assumption that Redemption in Arkansas, as well as the rest of the South, was solely a reaction to the perceived abuses and expansion of government during Reconstruction. Instead, what emerges is a more complex story that is not simply regional in scope but national.²

The lack of substantial scholarship on Arkansas's constitution might, in part, be explained by a thinness of source material. For scholars who study the Reconstruction constitutional convention of 1868, the debates and proceedings were published shortly afterward. While a daily record or journal was kept during the 1874 Constitutional Convention, it, by contrast, was never published. Scholars must spend painstaking hours sifting through microfilm copies of the handwritten journal. Furthermore, in many instances, it does not record roll call votes, preventing full analysis of divisions among the largely Democratic body. Much of the debate over constitutional articles took place in committee, and, to date, no records of these committee meetings have been found. In addition, when constitution-makers sought to address

² See, Michael Perman, *The Road to Redemption: Southern Politics, 1869-1879* (Chapel Hill: University of North Carolina Press, 1984), 108-115; Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 564-587; John Walker Mauer, "State Constitutions in a Time of Crisis: The Case of the Texas Constitution of 1876," *Texas Law Review* 68 (1990): 1616; Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: Harvard University Press, 199), 259-268.

controversial topics they often convened in a committee of the whole, once again leaving no records of their deliberations.³

Scholars studying the 1874 Arkansas Constitutional Convention have to deal with other source problems, too. Multiple newspaper accounts exist of the convention proceedings, but they can hardly be seen as a complete record. The state's major newspaper, the *Daily Arkansas Gazette*, provided in-depth coverage, but one must be cautious about relying too exclusively on the *Gazette*, as so many Arkansas historians have. Like many newspapers of this era, it was highly partisan. The *Little Rock Republican* offered coverage from the other side of the political spectrum, but it was spottier. The Arkansas State Archives contains a limited number of local or regional newspapers such as the *Weekly Observer*, the *Southern Standard*, and the *Fayetteville Democrat*, but many other papers that might have commented on the proceedings have been lost to time.

Archival sources are thin too. The convention contained a significant number of men who had held elective office prior to the convention or who would become prominent Arkansas political leaders afterward. However, scholars of the 1874 convention who hope to find treasure troves of letters or diaries containing information about these constitution-makers' service in the convention will be disappointed. In fact, despite the fact that both Henry M. Rector and Harris Flanagin served as Confederate governors of Arkansas, their papers provide almost no insight into the 1874 convention. While Flanagin's files contain letters from constituents about the work he was doing as chairman of the committee on the judiciary at the convention, other delegates who held or would hold state office left no records of their time in the convention in their, at

³ "The Journal of the Arkansas Constitutional Convention of 1874" (manuscript, on microfilm at Mullins Library, University of Arkansas, Fayetteville.)

times, vast collections at the state archives or in university libraries around the state. One factor that may explain this lack of archival material is the relative youth of many of these delegates. For some of these men this was their first political experience or, if they had previously served in some political office, it had been minor. It is not surprising that their records from the convention might not have been preserved. For others such as Grandison Royston, president of the convention, who possessed a long resume of governmental experience, or Hugh F. French, Bradley Bunch, or Rufus K. Garland, men who served in multiple capacities in the years prior to the war and during the war, the absence of archival material is harder to explain.

Not surprisingly, perhaps, what scholarship exists on the 1874 Arkansas Constitutional Convention is limited in scope and is lacking in the historical depth needed to provide a complete picture of constitution-making in the state. The primary studies have come from political scientists such as Calvin Ledbetter Jr., Diane D. Blair, and Robert Meriwether. These scholars focused on the shortcomings of the 1874 constitution and sought to explain why Arkansas has failed to replace it. Walter Nunn was an ardent supporter of constitutional reform in the state during the 1960s and 1970s and focused much of a 1968 article on the convention on ways that economic and social conditions had evolved since it wrote the constitution in 1874. Nunn and other scholars say little about what drove Democratic delegates to make the choices they did, besides citing general distrust of government and the wish to right the wrongs of Reconstruction, and fail to explore factions within the Democratic coalition. Instead, they emphasize like-mindedness among the delegates. Nunn wrote, “The delegates elected to the convention were on a whole a homogeneous group.”⁴ Kay Collet Goss argues that little division existed within the

⁴ Walter Nunn, “The Constitutional Convention of 1874,” *Arkansas Historical Quarterly* 27 (1968): 177-204 [quotation, 186].

1874 convention. She says “The fifth Arkansas Constitutional Convention’s proceedings, which lasted for most of the summer of 1874, were basically harmonious, with the Republicans outnumbered and the Democrats restrained.”⁵ If Nunn and Goss were to be believed, then Arkansas’s Redeemer Constitution would be a rarity, considering the scrapping among Democrats at other constitutional conventions of the era, such as in Texas.⁶

Historians have devoted less attention to the constitution but have taken a similar perspective on the convention. Thomas Staples argued,

The Democratic members were elected and came together under the impression that they were to be the chief actors in a work of reform. That reform, as they understood it, was to be the undoing of the work of the Republican Party in Arkansas as far as the state constitution was concerned.⁷

Other historians have agreed when it comes to Democratic aims in the 1874 Constitutional convention. Michael Dougan suggests that the sole reason for the constitutional convention was “to end the Republican experiment.”⁸ Typically, though, historians provide little analysis of the actual drafting of the 1874 Constitution. Thomas DeBlack, for instance, simply follows Staples in suggesting a Democratic Party united in using constitution-making as a means to counter what they saw as the “centralization” and expense of Reconstruction. For DeBlack these single-

⁵ Kay Collet Goss, *The Arkansas Constitution: A Reference Guide* (Westport: Greenwood Press, 1993), 7.

⁶See also, Calvin Ledbetter Jr, “The Arkansas Constitution of 1868: Conqueror’s Constitution or Constitutional Continuity?” *Arkansas Historical Quarterly* 44 (1985): 18-19; Diane D. Blair, *Arkansas Politics & Government: Do the People Rule?* (Lincoln: University of Nebraska Press, 1988); Franklyn C. Niles, “Change and Continuity in Arkansas Politics after the 1874 Arkansas Constitutional Convention,” ed. Connor and Hammons, *The Constitutionalism of American States* (Columbia: University of Missouri Press, 2008); Robert W. Meriwether, *Outline of the Arkansas Constitution of 1874 and Its Amendments* (Little Rock: Institute of Politics and Government, 1978).

⁷ Thomas S. Staples, *Reconstruction in Arkansas, 1862-1874* (New York: Columbia University Press, 1923), 425.

⁸ Michael B. Dougan, *Arkansas Odyssey: The Saga of Arkansas from Prehistoric Times to Present* (Little Rock: Rose Publishing Company, 1994), 268.

minded Democrats sought to limit the power of the government, to limit the terms of the governor along with limiting executive powers, to reduce the salaries of elected officials, and to assure that in the future constitutional officers would be elected not appointed.⁹ Carl Moneyhon, like DeBlack, spends little time on the 1874 constitution in *Arkansas and the New South, 1874-1929* or in *The Impact of the Civil War and Reconstruction on Arkansas*. More than others, though, he acknowledges differences among the convention's Democrats, noting factiousness and "squabbles." However, Moneyhon, too, emphasizes a kind of like-mindedness, seeing Democrats as beholden to a cohesive landed interest and arguing that the governing class was much as it had been during the antebellum era. Moneyhon says, "On the surface the Democrats appeared to be a fractious coalition, with disputes over policy and leadership always present. Despite these squabbles, however, the Democratic Party clearly represented the landed interest of the state."¹⁰

A close reading of the convention's debates and proceedings makes such assertions of like-mindedness and a single agrarian interest problematic. At the 1874 convention Democrats so outnumbered Republicans as to have a free hand, but they had to overcome differences of opinion and interest within their own caucus. Some of the Democratic delegates had been Whigs prior to the war, meaning they were more likely to embrace a more expansive notion of government. Some had been Unionists who reluctantly supported secession. These men also possessed varied economic interests and faced differing political circumstances at home, making for geographical divisions among Democrats. Another factor that led to divisions within the

⁹ Thomas A DeBlack, *With Fire and Sword: Arkansas, 1861-1874* (Fayetteville: University of Arkansas Press, 2003), 223-224.

¹⁰ Carl H. Moneyhon Jr., *Arkansas and the New South, 1874-1929* (Fayetteville: University of Arkansas Press, 1997), 18.

Democratic caucus was that of governmental experience. While some members of the Democratic caucus had held office, which often helped shape their political attitudes, others were newcomers to government.

In addition to like-mindedness, historians have tended to emphasize how grudging the constitution was. Scholars such as Carl Moneyhon have argued that the 1874 constitution was “severely” restrictive when it came to the powers of the state government and that the charter decentralized power by placing much of the state’s power in the county governments. Moneyhon has suggested the constitution underwrote an era a “period of government penury.”¹¹ Thomas DeBlack emphasizes Democratic goals such as limiting the power of the chief executive, decentralizing the state government, and limiting the state government’s ability to raise revenue. But he and other scholars tend to overlook evidence that the constitution did not go as far in this as some Democrats wished suggesting in another way the divisions within the party. As Michael Perman suggests that Tennessee, Arkansas, and North Carolina held conventions during Reconstruction to “rid” themselves of Republicans. This interpretation argues that these conventions often simply wished to go only as far as their present needs demanded.¹²

If scholars have neglected differences among Democrats, they have also failed to emphasize how the convention partook of regional and national impulses to limit the size and scope of government. Historian John Mauer argues that roughly half of southern state constitutions put strict controls on government powers.¹³ However, Mauer notes that southern

¹¹ Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Baton Rouge: Louisiana State University Press, 1994), 262.

¹² DeBlack, *With Fire and Sword*, 224; Moneyhon, *Arkansas and the New South*, 18; Perman, *The Road to Redemption*, 194-196.

¹³ Mauer, “State Constitutions in a Time of Crisis,” 1616.

constitution-makers were not alone in this. While Democrats were doubtlessly intent on ensuring that nothing like Reconstruction ever happened again, historical interpretations of the 1874 Arkansas Constitutional Convention fail to address trends that shaped constitution-making not just in the South but across the nation—trends such as moving away from positive government, moving to or reaffirming an elected judiciary, and retreating from universal suffrage. All too often the historiography of Redeemer constitution-making has focused on race and political development in the South with little regard for broader national economic and political trends. This focus has led to Redemption being viewed as a political development existing apart from changes taking place in the North and West during the same era.

In Arkansas, Redeemers altered the role of the chief executive by limiting the governor's appointive powers and fully embracing the plural executive. Redeemers sought to limit the perceived abuses of the legislative branch, in particular when it came to raising revenue and the length of the general assembly's sessions. They embraced an elected judiciary and sought to decentralize state government and embrace retrenchment when it came to issues of taxation, education, and internal improvements. However, this sort of conservatism was not the sole possession of southern Democrats. Instead, it was part of a national movement away from wartime and Reconstruction Republicanism. This nineteenth century conservatism was marked by the advocacy of limited government, personal liberty, and local self-government. Morton Keller shows that northern and western conservatives also sought to scale back the positive government of the Reconstruction Republican Party and return to limited government and, to some extent, reassert local control. Jean H. Baker, Robert Kelley, and Joel Silbey similarly

suggest demonstrate a national trend toward limited government, personal liberty, and local self-government, as well as white supremacy.¹⁴

Redeemer constitutions, as a result, frequently shared a common language with those of northern and western states. While scholars such as Amy Bridges, Alan Tarr, and Christian Fritz have long acknowledged this uniformity among state constitutions in the North and West, less has been written about how the postbellum South shared in this national language. The 1870s saw a reemergence of the Democrats and conservative ideology, not only in the South but nationally. As such, southern constitution making did not take place in a vacuum. While profoundly influenced by Reconstruction, it was not simply a response to what Democrats perceived as the abuses or corruption of the Republican regimes. Arkansas's 1874 Constitution contains examples of language found in northern, southern, and western constitutions of the era, ranging from Texas and Alabama to Illinois, Pennsylvania, and West Virginia, and Nebraska and Colorado.¹⁵

¹⁴ Keller, *Affairs of State*, 51, 85, 106-107, 110-116; See also, Jean H. Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century* (New York: Fordham University Press, 1998); Robert Kelly, *The Transatlantic Persuasion: The Liberal-Democratic Mind in the Age of Gladstone* (New York: Alfred A. Knopf, 1969); Joel H. Silbey, *A Respectable Minority: The Democratic Party in the Civil War Era, 1860-1868* (New York: W. W. Norton & Company, 1977).

¹⁵ Historian Don E. Fehrenbacher demonstrated the extent of shared language within the antebellum South but no comparable work exists for postbellum constitution making. Don E. Fehrenbacher, *Constitutions and Constitutionalism in the Slaveholding South* (Athens: University of Georgia Press, 1989), 29; Christian G. Fritz, "The American Constitutional Tradition Revisited: Preliminary Observations on State Constitution-making in the Nineteenth-Century West," *Rutgers Law Journal*, 25 (1995): 972-982; Amy Bridges, *Democratic Beginnings: Founding the Western States* (Lawrence: University Press of Kansas, 2015), 14-15, 19-20-142; Mauer, "State Constitutions in a Time of Crisis," 1616-1620.

The chapters that follow tell a story of the constitutional changes that took place in Arkansas following the Civil War and Reconstruction—changes that have for too long been seen as the work of a homogeneous Democratic delegation, as representing the extremes of restrictive statecraft, and as a reaction solely to the perceived and real abuses of Reconstruction alone. In telling this story, it contributes to our understanding of nineteenth-century southern and American government more generally. The chapters that follow are organized around themes, the judiciary, decentralization, taxation, the franchise, education, and internal improvements. These issues were chosen because they were the issues of greatest public concern, whether it be the South, the North, or the West, during this era.

Chapter 2

“The ablest men who ever assembled”

The Beecher-Tilton sex scandal captivated the nation in the summer of 1874.¹ Arkansas newspapers from the *Daily Arkansas Gazette* to the *Helena Independent* devoted their front pages to covering the seedy affair. The attention of many Arkansans, however, was presumably also drawn to the constitutional convention getting underway in Little Rock. On the morning of July 14, 1874, eighty-three of the ninety-one delegates who had been elected presented themselves in what had to have been an oven of a House chamber in the State House. The *Daily Gazette* would report that two people had suffered heat stroke at Omaha, in the Arkansas Ozarks, the same day.

These delegates have traditionally been seen by historians such as Thomas Staples as a distinguished group of individuals. Indeed, this group included two former governors (Henry M. Rector and Harris Flanagin), three future governors (James P. Eagle, Simon P. Hughes, and Williams Fishback) and two future justices of the Arkansas Supreme Court (Henry G. Bunn and John A. Eakin). Staples said of these delegates, “A large majority of the members of the convention were men of ability, well and favorably known throughout the state and identified with the substantial interests of their respective communities.”² The delegates themselves shared

¹ Henry Ward Beecher, pastor of the Congregationalist Plymouth Church in Brooklyn, was sued for adultery by his friend and a parishioner of his church, Theodore Tilton. Tilton accused Beecher, the son of Lyman Beecher, the brother of Harriet Beecher Stowe of *Uncle Tom's Cabin* fame, and one of the nation's most prominent ministers, of having an affair with his wife, Elizabeth. The trial ended in a hung jury.

² Thomas S. Staples, *Reconstruction in Arkansas, 1862-1874* (New York: Columbia University Press, 1923), 425.

this opinion. J. W. House, delegate from White County recalled, “It is universally conceded that, as a whole [the convention] was composed of the ablest men who ever assembled in the state in any legislative or political capacity, and we think it is generally conceded that it has no equal since that time.”³ In asserting delegates’ homogeneity, political scientist Walter Nunn has made a similar argument, saying

If a typical delegate could be described, he would have the following characteristics: white, Democrat, farmer or lawyer, former Confederate soldier, elected to the legislature during his lifetime, a member of the Mason or other secret society, and generally regarded as a pillar of the community.⁴

Nunn also said of the body was “one of the most outstanding legislative bodies ever convened in Arkansas in terms of honesty, motivation, ability and experience of its members.”⁵ Carl Moneyhon has suggested they shared other common bonds, arguing that “Democratic candidates elected to the Constitutional Convention of 1874 and to subsequent state legislatures reflected more clearly the importance of agrarian interests in politics.”⁶ In fact, biographical data, and not simply debates within the convention, show this body was not as homogenous group as all this suggests.

Delegates possessed a broad range of political, governmental, and business experience. Arkansas voters sent seventy-nine Democrats (out of the total of 91 delegates) to the convention. Thirty-two Democrats possessed at least some prior political experience. Ten of these Democrats had served in the 1861 Secession Convention, while none of the members had been elected to the

³ J. W. House, “The Constitutional Convention of 1874—Reminiscences,” *Publications of The Arkansas Historical Association*, Vol. 4, Conway, AR, 1917, 210.

⁴ Walter Nunn, “The Constitutional Convention of 1874,” *Arkansas Historical Quarterly* 27 (1968): 177-178, 186 [quotation].

⁵ Walter Nunn, “The Constitutional Convention of 1874,” 189.

⁶ Carl H. Moneyhon, *Arkansas and the New South, 1874-1929* (Fayetteville: University of Arkansas Press, 1997), 18.

1864 convention that wrote the constitution that reestablished loyal government in the state.

Three Democrats had experience serving in the 1868 constitutional convention. Yet little attention has been given to these delegates' political careers prior to the 1874 convention.⁷

Of the thirty-two Democrats who possessed some level of political experience only two possessed only county-level experience. Stephen Bates of Polk County had previously served as a justice of the peace in both his native Georgia and in Polk County, while Charles Bowen of Mississippi County had served as deputy sheriff and then sheriff of Mississippi County (as well as being active in the Ku Klux Klan). Fourteen of the thirty-two had served in the general assembly prior to secession. Fifteen had served in the general assembly between secession and the end of Reconstruction. Six of these Democrats held state offices. Two, Henry M. Rector and Harris Flanagin, served as Confederate governors of Arkansas. In fact, Flanagin had defeated Rector to become governor in 1862. One delegate, John Hampton, had served as acting governor in his capacity as President of the Senate in 1851, when Governor John Roane had been out of the state. Allan Witt had held the office of State Land Commissioner for one term, and both Grandison Royston and Hugh F. Thomason had served as prosecuting attorneys. Four of these Democrats could also claim some degree of national experience, though for three of them--Royston, Thomason, and Rufus Garland--this experience was in the Confederate Congress. Garland had defeated Royston for a seat in the Confederate Congress. Royston had twice been appointed as a U.S. Attorney, once by Andrew Jackson and once by John Tyler.⁸ William

⁷ Uriah M. Rose, *The Constitution of the State of Arkansas: Framed and Adopted by the Convention Which Assembled at Little Rock, July 14, 1874, and ratified by the people of the state at the election held October 13th, 1874*. (Little Rock: Press Printing Company, 1891), 236-237, 318-320; Moneyhon, *Arkansas and the New South*, 18.

⁸ Charlie Daniels, *Historical Report of the Secretary of State, 2008* (Little Rock: Arkansas Secretary of State's Office, 2008).

Fishback had been appointed to the U.S. Senate but had never been seated. Fishback had voted for secession in 1861 but then fled the state going to St. Louis where he edited a Unionist newspaper. This has led Ruth Caroline Cowen, writing in the *Arkansas Historical Quarterly* to conclude that, William Fishback, “was a political opportunist.”⁹ Once Federal forces took Little Rock, Fishback returned to Arkansas and edited *The Unconditional Union*. He served as an advisor to Governor Isaac Murphy and flirted with Republicanism. After the U.S. Senate failed to seat him, he was appointed the U.S. Treasury agent for Arkansas during Presidential Reconstruction.

Democrats also differentiated along lines of occupation and nativity. In total there were thirty-four farmers in the Democratic delegation elected to the convention. Ten were members of the Grange. There were also thirty-two lawyers elected, three ministers, seven doctors, and two merchants. It is important to note here that not all delegates’ professions are easy to establish. In addition, some delegates practiced more than one profession. Of the Democrats elected to the convention, eleven were native Arkansans. The largest number, twenty-eight, were natives of Tennessee, while Virginia natives represented seven members of the Democratic caucus. Other members came from Kentucky, North Carolina, Alabama, Mississippi, and South Carolina. Two Democratic delegates came from northern states, New Jersey and Pennsylvania.

Because the convention has been so little studied, biographical information about the Democratic delegates is presented in tabular form. This information has been gathered from multiple sources such as U.S. Census records, Ancestry.com, the *Historical Report of the Arkansas Secretary of State*, and genealogy sites.

⁹ Ruth Caroline Cowen, “Reorganization of Federal Arkansas, 1862-1865,” *Arkansas Historical Quarterly* 18 (1959): 138.

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
John A. Anderson	Craighead	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Unknown
Monroe Anderson	Lee	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Kentucky
William W. Baily	Boone	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Stephen G. Bates	Polk	Doctor	<ul style="list-style-type: none"> • <i>Justice of the Peace in Georgia</i> • <i>Justice of the Peace in Polk County</i> 	Georgia
W. H. Blackwell	Perry	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Missouri
Charles Bowen	Mississippi	Farmer	<ul style="list-style-type: none"> • <i>Deputy Sheriff, Mississippi County, 1838</i> • <i>Sheriff, Mississippi County, 1844</i> 	Tennessee
E. Forrest Brown	Clayton	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Missouri

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
Bradley Bunch	Carroll	Lawyer	<ul style="list-style-type: none"> • <i>Justice of the Peace, Carroll County</i> • <i>Associate Justice of the County Court</i> • <i>General Assembly, 1856, 1860, 1864, 1866</i> • <i>Speaker of the House, 1860</i> 	Tennessee
Henry G. Bunn	Ouachita	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	North Carolina
James W. Butler	Independence	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Virginia
Nicholas W. Cabler	Montgomery	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Walter J. Cagle	Stone	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
John Carroll	Madison	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Virginia
Henry W. Carter	Pike	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	North Carolina

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
Ben Chism	Sarber	Lawyer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Arkansas
Benjamin H. Crowley	Greene	Lawyer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Arkansas
Davidson O. D. Cunningham	Grant	Farmer	<ul style="list-style-type: none"> <i>General Assembly, 1860</i> 	Tennessee
Jacob Custer	Howard	Minister	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Tennessee
Jesse N. Cypert	White	Lawyer	<ul style="list-style-type: none"> <i>Secession Convention, 1861</i> <i>Constitutional Convention, 1868</i> 	Tennessee
John W. Cypert	Baxter	Merchant	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Tennessee
George H. S. Dodson	Newton	Farmer	<ul style="list-style-type: none"> <i>General Assembly, 1866</i> 	Arkansas
Franklin Doswell	Jackson	Lawyer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Virginia
John Dunaway	Faulkner	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Arkansas

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
James P. Eagle	Lonoke	Minister	<ul style="list-style-type: none"> • <i>General Assembly, 1872</i> 	Tennessee
John R. Eakin	Hempstead	Lawyer	<ul style="list-style-type: none"> • <i>General Assembly, 1866</i> 	Tennessee
William Fishback	Sebastian	Lawyer	<ul style="list-style-type: none"> • <i>Secession Convention, 1861</i> • <i>Appointed U.S. Senator, 1864</i> • <i>Appointed Federal Treasury Agent</i> 	Virginia
Harris Flanagan	Clark	Lawyer	<ul style="list-style-type: none"> • <i>General Assembly, 1842, 1848, 1861</i> • <i>Secession Convention, 1861</i> • <i>Confederate Governor</i> 	New Jersey
J. G. Frierson	Cross	Lawyer	<ul style="list-style-type: none"> • <i>General Assembly, 1870, 1872</i> 	Tennessee
Rufus Garland	Nevada	Farmer	<ul style="list-style-type: none"> • <i>General Assembly</i> • <i>Secession Convention, 1861</i> • <i>Confederate Congress</i> 	Tennessee

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
James Gibson	Arkansas	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Kentucky
Robert Goodwin	Union	Farmer	<ul style="list-style-type: none"> • <i>Secession Convention, 1861</i> 	Alabama
Ransom Gulley	Izard	Merchant	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	North Carolina
John R. Hampton	Bradley	Farmer	<ul style="list-style-type: none"> • <i>Commission to select Union County seat</i> • <i>General Assembly, 1846, 1848, 1850, 1852, 1856, 1858, 1862, 1864</i> • <i>President of the State Senate, 1850, 1856</i> 	North Carolina
William S. Hanna	Conway	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Mississippi
Joseph T. Harrison	Yell	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Marcus L. Hawkins	Ashley	Lawyer	<ul style="list-style-type: none"> • <i>Secession Convention, 1861</i> 	Alabama

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
John J. Horner	Phillips	Lawyer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Virginia
Joseph W. House	White	Lawyer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Tennessee
Seth J. Howell	Johnson	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Kentucky
Simon P. Hughes	Monroe	Lawyer	<ul style="list-style-type: none"> <i>General Assembly, 1866</i> 	Tennessee
Benjamin Johnson	Calhoun	Lawyer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Unknown
Roderick Joyner	Poinsett	Doctor	<ul style="list-style-type: none"> <i>General Assembly, 1872, 1874</i> 	Alabama
W. C. Kelly	Hot Spring	Doctor	<ul style="list-style-type: none"> <i>General Assembly, 1866</i> 	Unknown
Dawson L. Killgore	Columbia	Doctor	<ul style="list-style-type: none"> <i>General Assembly, 1856, 1858</i> 	Tennessee
B. H. Kinsworthy	Sevier	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Arkansas

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
M. F. Lake	Washington	Washington	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Tennessee
W. D. Leiper	Dallas	Farmer	<ul style="list-style-type: none"> <i>No political experience</i> 	Pennsylvania
Phillip K. Lester	Lawrence	Lawyer	<ul style="list-style-type: none"> <i>General Assembly, 1852</i> 	Tennessee
William S. Lindsey	Searcy	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Tennessee
Edwin Lucas	Fulton	Merchant	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Alabama
W. W. Mansfield	Franklin	Lawyer	<ul style="list-style-type: none"> <i>Justice of the Peace, Franklin County</i> 	Kentucky
John Miller	Randolph	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Arkansas
Elijah Mosely	Ouachita	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Georgia
John Niven	Dorsey	Farmer	<ul style="list-style-type: none"> <i>No prior political experience</i> 	Arkansas

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
John M. Parrott	Lincoln	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Horace H. Patterson	Benton	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Roberson J. Peirce	Marion	Merchant	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Georgia
R. P. Pulliam	Sebastian	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Kentucky
Henry M. Rector	Garland	Lawyer	<ul style="list-style-type: none"> • <i>General Assembly, 1858, 1860, 1862</i> • <i>Secession Convention, 1861</i> • <i>Confederate Governor</i> 	Kentucky
David R. Reinhardt	Prairie	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	North Carolina
A.M. Rodgers	Benton	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Kentucky
Jesse A. Ross	Clark	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Alabama

Table 1: Democratic Delegates, 1874 Constitutional Convention				
Name	Home County	Occupation	Political Experience	State of Birth
Grandison D. Royston	Hempstead	Lawyer	<ul style="list-style-type: none"> • <i>Constitutional Convention, 1836</i> • <i>General Assembly, 1836, 1856</i> • <i>Speaker of the House, 1836</i> • <i>Prosecuting Attorney</i> • <i>U.S. Attorney</i> • <i>Secession Convention, 1861</i> • <i>Confederate Congress</i> 	Tennessee
James Rutherford	Independence	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	North Carolina
John R. Homer Scott	Pope	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Arkansas
Jabez M. Smith	Saline	Lawyer	<ul style="list-style-type: none"> • <i>General Assembly, 1866</i> • <i>Secession Convention, 1861</i> 	Arkansas
George P. Smoote	Columbia	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Name	Home County	Occupation	Political Experience	State of Birth

Table 1: Democratic Delegates, 1874 Constitutional Convention				
J. W. Sorrells	Scott	Doctor	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Arkansas
James P. Stanley	Drew	Doctor	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Tennessee
Hugh F. Thomason	Crawford	Lawyer	<ul style="list-style-type: none"> • <i>Know-Nothing Congressional Candidate, 1856</i> • <i>Confederate Congress</i> • <i>General Assembly, 1866</i> • <i>Prosecuting Attorney</i> • <i>U.S. Attorney</i> • <i>Secession Convention, 1861</i> • <i>Confederate Congress</i> 	Tennessee
T. W. Thomason	Washington	Farmer	<ul style="list-style-type: none"> • <i>General Assembly, 1872</i> 	Arkansas
William J. Thompson	Woodruff	Lawyer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Virginia
Benjamin F. Walker	Washington	Farmer	<ul style="list-style-type: none"> • <i>Missouri General Assembly</i> 	Tennessee
Name	Home County	Occupation	Political Experience	State of Birth

Table 1: Democratic Delegates, 1874 Constitutional Convention				
H. G. P. Williams	Union	Farmer	<ul style="list-style-type: none"> • <i>South Carolina General Assembly</i> 	Alabama
James H. Williams	Little River	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	South Carolina
Lewis Williams	Sharp	Farmer	<ul style="list-style-type: none"> • <i>No prior political experience</i> 	Virginia
Allan R. Witt	Van Buren	Farmer	<ul style="list-style-type: none"> • <i>State Land Commissioner, 1856</i> • <i>General Assembly, 1866</i> 	Tennessee

Chapter 3

Decentralization

Arkansas Democrats, like their counterparts elsewhere, made war on all aspects of Reconstruction governance. Morton Keller argues, “Reconstruction policy took form in an atmosphere charged with polar beliefs as to the nature of government, race relations, and American citizenship—beliefs subsumed under the labels of Radicalism and Conservatism.”¹ As Keller notes “The theoretical commitment of the ‘redeemers’ to local government was strong.”²

Charges of “centralization” proved to be one of the Redeemer Democrats’ most effective rallying cries in their fight against Republicans. Southern Democrats saw the Reconstruction governments lodging too much power in the state, violating their principle of local self-government. Both the executive and legislative branches had been the source of much political mischief. One letter writer put it this way in the *Daily Arkansas Gazette*: “We are liable to be too much governed.”³ When it came to the executive branch Democrats decried the broader appointment powers granted to the governor by the 1868 Constitution. But they also saw the Civil War as contributing to centralization. Morton Keller notes, “During the war Lincoln appointed governors in Arkansas, Tennessee, North Carolina, and Louisiana. As the chief executives of war-torn states, these men acted with great vigor. They often removed local officials, and strictly regulated the activities of schools and churches.”⁴ Democrats also

¹ Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: The Belknap Press, 1977), 31.

² Keller, *Affairs of State*, 230.

³ “A New Constitution,” *Daily Arkansas Gazette*, July 12, 1874.

⁴ Keller, *Affairs of State*, 19.

expressed concern over the creation of new offices such as the superintendent of public institution, and lieutenant governor. They sought to avoid such a powerful executive in the future.⁵

White Democrats saw a distinct turn toward centralization with Reconstruction, when it came to executive power, Arkansas's 1868 Reconstruction Constitution, incorporated many elements of previous documents. For example, it specified that the qualified voters of the state would elect the governor who would serve a term of four years. The 1868 Constitution perpetuated changes in the executive branch made in 1864 as part of the state's effort to gain readmission to the Union under Presidential Reconstruction, including the creation of the elective office of lieutenant governor. This officer was to be elected by the people just like the governor and serve a four-year term. Additionally, the lieutenant governor would serve as the President of the Senate and, in the case of a vacancy in the office of governor, would assume that office. The 1864 Constitution also created the offices of auditor and treasurer. Both officers were made elective but, unlike the governor and lieutenant governor, would only serve a two-year term of office. The framers of the 1868 Reconstruction Constitution kept these offices with all having four-year terms.⁶

Yet in other areas the 1868 Constitution differed substantially from previous documents. Constitution-makers created two new offices—attorney general and superintendent of public instruction--both elective and holding a term of four years. If vacancies occurred in the offices of

⁵ Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Baton Rouge: Louisiana State University Press, 1994), 251-253; Thomas DeBlack, *With Fire and Sword: Arkansas, 1861-1874* (Fayetteville: University of Arkansas Press, 2002), 191-200

⁶ *Debates and Proceedings of the Constitution, which assembled at Little Rock, January 7th, 1868....: To form a Constitution for the State of Arkansas* (Little Rock: J.G. Price, 1868), 873.

secretary of state, treasurer, auditor, attorney general, or superintendent of public instruction the governor was given the power to appoint a replacement who would complete his term in office. He would also appoint a commissioner of public works and internal improvements. This individual was to serve a term of four years. However, the remaining executive offices would now be subject to election by the people, not by the general assembly, as under the 1836 and 1861 constitutions.⁷

What disturbed Democrats most was that, if the elective principle prevailed in the case of top officers of the executive branch, the governor was given even broader appointment powers in other arenas. The governor was given the power to appoint a majority of the judicial offices in the state including the Chief Justice of the Supreme Court. The governor also appointed some county officers such as the tax assessor and could fill vacancies in almost any office. Most importantly, broader appointment power allowed the governor greater power to rein in local recalcitrance in areas with Democratic majorities, giving the central state government greater power to enforce law and order. A Republican governor could appoint Republicans to office in areas where Democrats were in a majority. This allowed the governor some say over local government but also allowed him to build a Republican organization throughout the state by rewarding loyalists with offices, positions, and salaries. These appointive powers have led historian Thomas DeBlack to argue that the 1868 Constitution led to the most active government in the state's history. It was also the most centralized. In addition to exercising his powers of

⁷ "Journal," 873; John Walker Mauer, "State Constitutions in a Time of Crisis: The Case of the Texas Constitution of 1876," *Texas Law Review* 68 (1990): 1616.

appointment, Powell Clayton had presumed to declare martial law and deploy a militia to enforce law and order where local officials could not or would not.⁸

The 1868 Arkansas Reconstruction Constitution marked a departure from the state's constitutional past by investing the governor with broad appointive powers. Executive Power in Arkansas had been shaped by national trends.. The earliest state constitutions tended to provide for an executive with limited authority. These states sought to avoid the abuses or perceived abuses that royal governors had committed during the colonial era. Early state constitutions sometimes had the legislative branch select the chief executive, typically for a short term (one year in the case of Connecticut and Rhode Island). In other states, such as New York, Vermont, and Massachusetts, the executive was subject to direct election by voters. These early governors were given a limited set of powers. They typically served as the commander-in-chief of the state's armed forces and were granted the power to pardon. Under the 1836 Arkansas Constitution, the governor was given a veto power that could be reversed by a simple majority. The governor's appointment powers were somewhat limited. In fact, the general assembly, not the governor, appointed the treasurer, judges, and other officials. This conformed to a national pattern. As new states entered the union, constitution-makers at the state level allowed for the popular election of the chief executive and established states tended to follow suit. However, governors would continue to be relatively weak as states embraced the concept of a "plural executive." This plural executive model allowed the power of the executive branch to be spread out among a group of elected or appointed officials and not concentrated in the hands of the

⁸ Calvin Ledbetter Jr., "The Office of Governor in Arkansas History," *Arkansas Historical Quarterly* 37 (1978): 59-61; DeBlack, *With Fire and Sword*, 169.

governor. The 1836 constitution had created a relatively weak executive while the constitution of 1861 due to personal and local conflicts had further weakened the executive in some ways.⁹

Redeemers were also concerned by the power exercised by the Reconstruction legislature. The 1836 Constitution had created a bicameral legislature. Service in either chamber was limited to white males who had resided in the state for at least one year prior to their election. The general assembly was to meet in regular session every two years. The Constitutions of 1861 and 1864 differed little from the 1836 document when it came to the legislative branch. The 1868 Reconstruction Constitution no longer restricted office holding to whites but made only slight changes in the powers of the legislature. Like previous constitutions, the bicameral legislature was to meet every two years in regular session. One important change made by constitution-makers in 1868 was a requirement that any bill raising revenue had to originate in the House of Representatives. If the 1868 Constitution made few changes in the formal powers or structure of the legislature, it charged it with promoting public education and economic development, and the Reconstruction legislature had exercised this authority vigorously in establishing a public school system and enacting a railroad aid law.¹⁰

Opposition to centralization thus became an overarching theme. In March of 1872, Democrats from Van Buren County declared “let us blot forever from its history the name

⁹ Ledbetter, “The Office of Governor, in Arkansas History,” *Arkansas Historic Quarterly* 37 (1978): 46, 51-54; John A. Fairle, “The Executive Power in the State Constitution” *The Annals of the American Academy of Political and Social Science*, 181 (1935): 60-61; Alan Tarr, *Understanding State Constitutions* (Princeton: Princeton University Press, 1998), 121-122, 129-130, 132; Jack B. Scroggs, “Carpetbagger Constitutional Reform in the South Atlantic States, 1867-1868” *Journal of Southern History* 27 (1961): 485.

¹⁰ 1836 Arkansas Constitution, Article IV; 1861 Constitution, Article III; 1868 Constitution, Article V; Rodney Harris, “Arkansas General Assembly” *The Encyclopedia of Arkansas History and Culture*, www.encyclopediaofarkansas.net (accessed 3-14-2017).

centralization of power, and let us if possible have once again freedom, peace, and equal rights.” On June 10, 1874 the *Gazette* had published an article signed “Madison” expressing what might be taken as the typical Redeemer stance. He laid out a series of suggestions to rein in the power the executive had exercised during Reconstruction. First, Madison suggested that the delegates strip the governor’s power to declare martial law. Arkansas Democrats remained outraged over the “Militia Wars” that took place in 1868 and 1869. Clayton had declared martial law in Ashley, Bradley, Columbia, Craighead, Greene, Lafayette, Little River, Mississippi, Sevier, and Woodruff Counties. Later martial law was expanded to Conway, Crittenden, Drew, and Fulton Counties. Clayton’s use of black troops to enforce martial law exacerbated tensions with Democrats. Madison also sought to severely limit the power of the governor to appoint officials. Madison proposed keeping all offices including secretary of state, auditor, treasurer, and any future offices within the executive branch elective. Given that Democrats could count on winning sizable majorities in many counties, and in the state at large, this expression of elective office holding would doubtlessly serve the party’s future interests.

Similar calls were heard from outside the state capital. One published in the *Fort Smith Herald* called on constitution-makers to:

Place the elective in the hands of the people, abolish the appointive power of the executive, and in other and all ways guard, protect, watch and defend the rights and liberties of the people over and against fraud and corruption, and once again let the people rule.¹¹

The *Pocahontas Weekly Observer* from the northeast region of the state echoed this sentiment.

The *Observer* called on constitution-makers to end appointive offices and restrict the powers of

¹¹ “Constitutional Convention,” *Fort Smith Herald*, May 30, 1874.

the chief executive. They said these limitations were needed even if the governor was “as good as Baxter or as bad as Clayton.”¹²

However, other commentators in the Democratic press struck a more cautious note. On June 17, 1874 the *Gazette* published a letter to the editor from “G” of Prescott in Nevada County.

The most odious feature of the present (radical) constitution is the unlimited appointing power bestowed upon the executive—which has been wielded altogether (as it was intended) for partisan purposes, and for the oppression of taxpayers. Our extreme hatred of this feature of the radical constitution is apt to lead us into the opposite extreme, if we are not guarded in framing the constitution. Some journals of considerable note, and some of our public men, are taking the position that all officers should be chosen by popular vote. There are some officers which it is right and proper that the great mass of voters should elect, whilst there are others which can be more properly elected by agents of the people, chosen for the purpose.¹³

Democrats might not have had reason to worry about unrestrained popular rule in some counties. But that was not the case in much of the Delta or cities like Little Rock, which were not as certain to be Democratic.

If the party had rhetorically committed itself to decentralization, then empowering local voters could pose problems for Democrats in communities where Republicans or African Americans were present in large numbers. Accordingly, divisions would become evident at the 1874 convention over how far to proceed with the work of decentralization. On July 22, future governor Simon Hughes of Monroe County introduced an ordinance providing for a robust executive department, endowing the governor with a four-year term, two-thirds veto, and line item veto. Hughes was willing to provide a means for the governor to convene the general assembly as well as adjourn the assembly in instances when the two houses could not agree on a

¹² “What Arkansas is Saved From,” *Weekly Observer*, July 14, 1874.

¹³ “G,” “The Convention,” *Daily Arkansas Gazette*, June 17, 1874.

time of adjournment.¹⁴ Monroe was a Republican County so it is not strange that Hughes wanted a strong governor since recent elections had suggested Democrats had a large majority statewide.¹⁵ Hughes seemed less zealous than other Democrats to put the greatest power in the hands of local majorities.

Most Democrats evidently preferred a weaker executive, though. On July 30 John R. Hampton, chair of the committee on the executive department, submitted the article outlined by his committee. In contrast to Hughes' proposal, it eliminated the office of superintendent of public instruction and provided for a two-year rather than four-year term of office. A simple majority of the whole number of elected representatives, (as under the 1868 constitution), could overturn the governor's veto. But like Hughes' proposal, it actually expanded the governor's powers through the "line-item veto" or executive veto.

The governor shall have power to disapprove of any item, or items, of any bill making appropriations of money embracing distinct items, and the part or parts of the bill approved, shall be the law, and the items, of appropriations disapproved, shall be the law, and the item, or items of appropriations disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.¹⁶

Here we see the limits of Democrats' wish to curtail the powers of the governor. The 1868 Constitution had contained no such provision. However, Democrats may have seen the line item veto more as a limit or check on the power of the general assembly than an expansion of

¹⁴ "Journal," 109.

¹⁵ In fact, Monroe County would vote for the Republican candidate for president in 1872, 1876, and 1880. *Biennial Report of the Arkansas Secretary of State*, 1880. Special Collections, Mullins Library, University of Arkansas, Fayetteville.

¹⁶ "The New Constitution," *Daily Arkansas Gazette*, July 31, 1874.

executive power. In the end the governor was provided with very limited appointment powers especially when compared to those exercised by the governor under the 1868 constitution.¹⁷

The committee also followed Hughes in giving the governor the ability to adjourn the general assembly when a disagreement between the two houses existed concerning the day and time of adjournment, another expansion of the chief executive's powers not found in the 1868 Constitution.¹⁸

On the morning of August 13, delegates began their consideration of the executive article and the first explicit signs of Democratic divisions emerged. Jesse Newton Cypert of White County served as the initial spokesman for one group of Democrats who did not think that the committee had gone far enough when it came to decentralizing the executive branch. It still required, for example, that executive officeholders live in the capital, Little Rock. Cypert and other Democrats feared that this requirement would mean that all power would be centralized in the city. Some argued, too, that it would be impractical to expect men to pack up their families and move to Little Rock for a two-year term of office. Others like John Eakin of Hempstead County insisted that it was beneath the dignity of the office to tell the men who would hold them where they could reside. Ultimately, the majority of Democrats agreed with Cypert and Eakin and voted seventy-three to eleven to strike this language from the article. Of the eleven who opposed striking the language, two were white Republicans, Sidney Barnes and Dan O'Sullivan, both of Pulaski County. O'Sullivan was a native of Ireland and had been selected as a delegate

¹⁷ Ibid.; Arkansas Constitution of 1874, Article VI: Executive Department, Section 1, Section 3, Section 15. .

¹⁸ "The New Constitution," *Daily Arkansas Gazette*, July 31, 1874; "Article VI: Executive Department", *Debates and Proceedings....1868*, 868-873.

after the resignation of former Confederate General James Fagan as a delegate.¹⁹ Of the nine Democrats, five possessed a degree of political experience. While not a consensus, it does suggest that those who possessed prior political experience might have a greater appreciation for the need of officeholders, at least statewide officeholders, to live in the capital where they could devote their attention to the job they had been elected to do. Of these men Henry Rector, the former Confederate governor of Arkansas, represented Garland County in the convention. William Fishback, representing Sebastian County, as noted, had been appointed as the U.S. Senator by the state's unionist legislature, though he was never seated. John R. Hampton of Bradley County had been the president of the senate in the 1850s and had even served as acting governor. John R. Homer Scott of Pope County was the son of Arkansas's territorial Supreme Court judge and his father served as a member of the 1836 convention. The younger Scott served in the legislature prior to the 1874 convention. Seth Howell, a Democrat from Johnson County, had also served in the legislature prior to serving in the convention.²⁰

The convention sought to address centralization in other ways. The constitution of 1868 provided for a state land commissioner's office, while no such office was present in the proposed executive article of the 1874 Constitution. But, Democrats were divided in this instance, too. Some such as W. D. Leiper of Dallas County sought the creation of such an office. He argued that the state with its predominantly agricultural base needed a land commissioner. Other

¹⁹ James Fagan led Arkansas troops at multiple battles including Shiloh and Helena. Fagan's political loyalties were fluid. He sided with Brooks during the Brooks-Baxter war and later received a presidential appointment from President Ulysses S. Grant as the U.S. Marshal for Arkansas. He resigned as a delegate from the 1874 convention due to this appointment. In 1877 he was appointed receiver of lands at the U.S. Land Office in Little Rock. David Sesser, "James Fleming Fagan (1828-1893)," *The Encyclopedia of Arkansas History and Culture*, www.encyclopediaofarkansas.net, (accessed 3-20-17).

²⁰ "Journal," 305-309.

Democrats argued that previous land commissioners had not been good managers and therefore the office needed to be abolished. Some of these Democrats sought to add the duties of the land commissioner to those of the state auditor while others argued that this would not be a good fit. A group of Democrats sought a middle of the road approach. They wished to leave the decision up to legislature after the ratification of the constitution. In the end, a compromise offered by Jesse Cypert of White County emerged. The issue would be left in the hands of a future legislature, but constitution-makers did stipulate that the commissioner was not to be made the commissioner of immigration as had previously been the case under the 1868 Constitution. The Cypert compromise was adopted 54 to 37. The breakdown of this vote is unavailable as it was neither recorded in the official journal nor reported in the *Daily Arkansas Gazette*. Leiper sought to make sure the commissioner of state lands could not be an appointive office. He was joined in this effort by Henry Bunn, the former state senator from Ouachita County. No action was taken on this front but later when the general assembly created the office, it was an elective one. The interesting thing here is that the Democratic majority voted to create a more expansive branch than the committee's article had provided for. In fact allowed the office of land commissioner to continue to exist unless abolished by the general assembly at its next session.²¹ The legislature did not take action to abolish the office.

Democrats who opposed the creation of the commissioner of state lands may have lost the battle, but they sought to bar the state government from further expansion. John Miller, a delegate from Randolph County who saw the creation of the commissioner of state lands as creeping toward centralization made a motion that "there shall be no additional state officers

²¹ Constitution of 1874, Schedule, Section 24

created by the general assembly.”²² Here two experienced Democrats, both former governors, opposed this provision. Harris Flanagin argued, and former governor Henry Rector agreed, that future legislators might find it necessary to create additional offices and that such a provision would unnecessarily complicate the general assembly’s job. Miller withdrew his measure before a vote was taken under pressure from Democrats cautious about downsizing government too much. Committee language dealing with gubernatorial vetoes was approved by the convention with no changes.²³

The convention also sought to prevent the governor from exercising the sort of muscular power wielded by Clayton during the Militia War. Under the 1874 Constitution, the governor was only given the power to call out the militia when the general assembly was not in session. In addition, the legislature was given the sole power to suspend habeas corpus.²⁴

Neither the convention journal nor the Democratic press recorded all of the votes on executive power. This, of course, makes it difficult to establish patterns of support and opposition. Focusing on delegates who took part in the debate leading up to the votes provides some insight, though only limited, into the eventual outcome. The six Democratic delegates who spoke up for maintaining a more centralized executive or who at least saw that limitations and centralization might go too far came from counties that appear to have been slightly more politically contested. This pattern though is too limited to suggest that political considerations at home played a significant role in Democratic decision-making. But one might speculate that these contested counties might be leerier of decentralization since their counties might end up

²² “The Convention,” *Daily Arkansas Gazette*, August 14, 1874.

²³ “The Convention,” *Daily Arkansas Gazette*, August 14, 1874.

²⁴ Arkansas Constitution, 1874, Article 2, Section 11, Article 11, Section 4.

electing Republicans. This Democratic cohort contained pre-war elites as well as newcomers. When delegates' occupation is examined, no patterns emerge. Both groups contain lawyers, farmers, and merchants with the occasional minister or doctor thrown in.²⁵

While clearly traumatized by the Clayton governorship, when it came to executive powers, constitution-makers in Arkansas were partaking of regional and national trends. Alabama treated their executive department similarly. Alabama Redeemers reduced the number of officers by eliminating the position of lieutenant governor. They made executive officers subject to election by the people for a term of two years, a reduction from four years. However, they, too, embraced a line item veto, which allowed the governor to disapprove of any item or items associated with the appropriation of money within a bill.²⁶

Other southern states partook of this trimming of the executive branch as well. Unlike Arkansas, Florida, chose to keep the term of the governor at four years, but stipulated that the governor was barred from running for re-election. Democrats also reduced the number of executive offices by eliminating, just as Arkansas and Alabama did, the office of lieutenant governor and providing for the election of the secretary of state, attorney general, and the treasurer. The 1885 Constitution made these offices elective. Florida, like Arkansas, set executive officers' salaries within the constitution. They limited the salary of the governor to thirty-five hundred dollars a year. In Arkansas constitution-makers set the governor's salary at \$4,000, enshrining it in the constitution, meaning that only a constitutional amendment could change it. The delegates to Georgia's 1877 constitutional convention reduced the governor's term of office from four to two years and limited the governor to serve two consecutive terms.

²⁵ Arkansas Constitution, 1874, Article 2, Section 11, Article 11, Section 4.

²⁶ Alabama Constitution of 1875, Article V, Section 1, 2, 5, 13, 14.

They also made the secretary of state and other executive officers, who had been appointed by a joint vote of the general assembly, subject to election by the qualified voters of the state. When it came to compensation for the executive department, constitution-makers included salaries within the constitution. Georgia Redeemers reduced the governor's term to two years. At the same time, they made the offices of lieutenant governor, comptroller of public accounts, treasurer, commissioner of general land office, and the attorney general subject to popular election while the secretary of state remained appointed by the governor. Texas went down the same path with two year terms and an elected executive branch.²⁷

However, the trimming of executive power was more than just a corrective to the muscular authority exercised by Reconstruction governments in the South. In 1875, Nebraska constitution-makers called for all the state executive officers to be elected to a two-year terms. Delegates also limited the ability of future legislators to create new offices without amending the constitution. Constitution-makers in Colorado set the terms of executive officers at two years as did other states.²⁸

While Redeemer Democrats appeared to be less focused on the legislative branch than they were the judicial or executive in the weeks prior to the convention, they were hardly unconcerned about the direction the legislative article would take once the convention convened. Legislatures had also grown in power and influence as state governments became more active. On July 12, just days before the convention opened, a letter in the *Gazette* called for "restriction

²⁷ Florida Constitution of 1885, Article V, Section 2, 20, 29; Georgia Constitution of 1877, Article IV, Section 1, 2; Article V, Section 1, 2, 3; Tennessee Constitution of 1870, Article III, Section 4, 17, 18; Texas Constitution of 1876, Article IV, Section 1, 2, 5, 16; Arkansas Constitution of 1874, Article XIX, Section 11.

²⁸ Nebraska Constitution of 1875, Article V, Section 1, 24, 26; Montana Constitution of 1885, Article V, Section 1, 11; Colorado Constitution of 1876, Article IV, Section 1, 12, 19.

and limitation on power” when it came to the general assembly.²⁹ On June 6 the *Fort Smith Herald* published a letter from a candidate who was seeking a convention seat from Scott County, J. W. Sorrels. Sorrels pledged himself to place limits on the general assembly. “I am in favor of constitutional prohibitions upon the legislature that will forever protect the people from the encroachments of the moneyed corporations and monopolies, wherein they are forced to yield their earnings, with no corresponding benefit.”³⁰

Democrats’ anger toward the legislative branch was not just leveled at the Reconstruction general assembly. This anger was also directed at previous legislatures as well, such as their enactment of special legislation and local acts such as bills that benefited a single town or county, bills that benefited a single person, such as changing a person’s name or making a child legitimate, or bills granting an individual’s divorce. This also included acts incorporating individual companies. Opponents argued that these acts had cost the state large sums of money and opened the legislature to undue corporate influence.³¹

Concerns about special legislation, however, extended beyond the Reconstruction South, and Arkansas Democrats looked to northern states for remedies. A June 24 letter in the *Gazette* argued that delegates to the upcoming convention needed to look at the new constitution of Pennsylvania to see how constitution-makers had addressed the topic of special legislation and local acts. In Pennsylvania, constitution-makers had gone to great lengths to limit the general assembly’s ability to pass such legislation. On Sunday, July 12 a letter signed, “Madison”

²⁹ “A New Constitution,” *Daily Arkansas Gazette*, July 12, 1874.

³⁰ “To the Voters of Scott County,” *Fort Smith Herald*, June 6, 1874.

³¹ “A New Constitution,” *Daily Arkansas Gazette*, July 12, 1874; “Our Constitution and Convention,” *Daily Arkansas Gazette*, September 13, 1874; Mauer, “State Constitutions in a Time of Crisis,” 1616.

seconded this opinion. Madison argued that the legislative branch needed firm limits and provided a list of limitations that he thought delegates should consider. He argued that the use of special bills, everything from divorces to corporate charters, passed from 1836 to 1868 had cost the state hundreds of thousands of dollars. He suggested that delegates copy Article III, Section 7 of the new Pennsylvania Constitution. Article III of the Pennsylvania Constitution essentially embraced general incorporation saying that corporations could be established without a special charter from the state legislature. In essence, this provision barred any local or special law from being passed by the general assembly. According to Madison “Since 1836 we are overgrown with railroads and other powerful monopolies.”³² He thought this problem could be addressed by limiting the legislature’s ability to pass individual corporate charters.

Madison was proposing that constitution-makers further the national trend toward general incorporation laws that Republicans had already embraced in Arkansas. This would allow corporations to be chartered by fulfilling criteria stipulated by law rather than obtaining an individual charter from the state legislature. L. Ray Gunn argues that nineteenth-century political leaders had tired of what had essentially become a marriage between the state and corporations. The closeness between political leaders and business had produced many problems. Joseph Ranney shows how this general incorporation movement grew after the Civil War. According to Ranney Arkansas and South Carolina both embraced general incorporation laws during Reconstruction and in the case of Arkansas, continued this trend in the 1874 Constitution.

³² “A New Constitution,” *Daily Arkansas Gazette*, July 12, 1874.

Madison and others feared that the convention might not continue this trend and might return Arkansas to a system whereby the general assembly granted charters..³³

On Thursday, August 6 Bradley Bunch of Carroll County, the chair of the committee on legislative affairs, presented the committee's work to the convention. It should be noted here that the convention journal omits the proposed article. The *Daily Arkansas Gazette* however did publish it. It called for a bicameral legislative branch, just as Arkansas's four previous constitutions had, with representatives to be chosen every two years. Under the proposed article as in the 1868, members of the House of Representatives would have to be at least twenty-one years of age, and senators was twenty-five. The two houses would meet biennially. The committee's proposal barred any judge of the supreme, circuit, or inferior court as well as all state and county officials from serving in the legislature while they held their county, state, or judicial position. The committee also sought to address a problem that they thought had swelled to epidemic proportions under the 1868 Constitution, office swapping. In order to address this, the committee proposed language barring senators and representatives from being appointed to any civil office at the state level during the term for which they were elected. Lastly, the biennial session of the general assembly was not to exceed sixty days. This was a change from the state's previous constitutions, which did not place a maximum length on the legislative session.³⁴

³³ "A New Constitution," *Daily Arkansas Gazette*, July 12, 1874; L. Ray Gunn, *The Decline of Authority: Public Economic Policy and Political Development in New York, 1800-1860* (Ithaca: Cornell University Press, 1988), 245; Joseph A. Ranney, *In the Wake of Slavery: Civil War, Civil Rights, and Reconstruction of Southern Law* (Westport: Greenwood Publishing, 2006), 111.

³⁴ "The Convention," *Daily Arkansas Gazette*, August 7, 1874; 1836 Constitution of Arkansas, Article IV; 1861 Constitution of Arkansas, Article IV; 1864 Constitution of Arkansas, Article IV; 1868 Constitution of Arkansas, Article V;

Democratic divisions emerged when it came to biennial sessions, the use of political offices as stepping-stones to higher office, the length of the session, and the prohibition of special acts and the enactment of local legislation. At least one Democrat sought to strike the portion of the proposed article providing for biennial sessions, preferring to have the general assembly meet only every four years. No debate took place concerning this motion, making it impossible to ascertain what level of support this attempt garnered. However, it does show at least one Democrat wished to make the constitution more restrictive than it would, in fact, become. Had the general assembly met once every four years, the powers of the legislative branch would have been curtailed in a manner that would have left the branch almost superfluous.³⁵

The issue of legislative seats as stepping-stones to higher office occasioned some debate among Democratic members of the convention. Section 11 of the proposed article stated, “No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this constitution.”³⁶ Some delegates wished to make the provision more restrictive. One faction sought to strike the word “appointed” and replace it with “eligible.” A second faction wanted the language of the section clarified to say, “appointed or elected.” However, former Governor Harris Flanagin wished the restriction to bar legislators from being appointed or elected only to an office “which has been created, or emoluments of which have been increased during his term.”³⁷ Flanagin was joined by Jesse N. Cypert of White County (another delegate with prior political experience) in supporting this position. It is worth noting here that Cypert’s support for this proposal brought a challenge from J. Pennoyer Jones, a

³⁵ “Journal,” 352-353; “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

³⁶ “Journal,” 350; “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

³⁷ “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

black Republican from Desha County. Jones said he “did not wonder that Mr. Cypert should advocate the amendment. He had read in the *White County Record*, that Cypert had been recommended for a circuit judgeship.”³⁸ In the end, the motion offered by Flanagan was defeated. Once again, no vote tally was recorded so we do not know how much support the position taken by Flanagan and Cypert received, nor do we know who supported their position. Ultimately, constitution-makers agreed upon barring members of the general assembly from being elected or appointed to any civil office under the state during the term of their elected office.³⁹

The 1868 Arkansas Constitution had provided for a biennial session just as constitution-makers proposed for the 1874 Constitution. However, the committee proposed limiting regular sessions to sixty days, apparently fearing a runaway session where legislators simply did not adjourn in a timely manner. Many Democrats around the nation supported confining sessions within narrow limits. Two states that enacted new constitutions prior to Arkansas, West Virginia (1872) and Pennsylvania (1874), limited their legislatures to sixty-day regular sessions. Both Alabama (1875) and Florida (1885) would enact sixty-day limits too.⁴⁰ Jesse Ross of Clark County, one of the convention’s Grangers, wanted to make this provision even stronger by penalizing legislators if they exceeded the sixty-day cap. He offered may be extended at the expense of the members.”⁴¹ But a majority clearly thought that was going too far, offering another example of the convention opting for less restriction than some Democrats desired. Hugh Thomason proposed instead, “when the regular bicameral sessions of the general assembly shall exceed sixty-days in duration, the members thereof shall only receive half-pay during the

³⁸ “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

³⁹ “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

⁴⁰ Alabama Constitution of 1875, Article IV; Florida Constitution of 1885, Article III; Pennsylvania Constitution of 1874, Article II; West Virginia Constitution of 1872, Article VI.

⁴¹ “Journal,” 355; “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

remaining session.”⁴² In fact, this could be considered less restrictive than the committee’s proposal, which seems to be a total ban on sessions extending beyond sixty days. Both measures, i.e the committee’s and Thomason’s, lost on a voice votes.⁴³

Other Democrats objected to the committee’s limits. John Eakin from Hempstead County, one of the most politically experienced delegates in the convention, wanted to see the section entirely removed, thinking it was bad governmental policy to limit or constrain the legislature to a certain number of days. Such a provision might imperil the state later. Dawson Killgore of Columbia County, though he lacked previous political experience, agreed and thought that much harm could come from limiting the session, which could lead to hasty legislation. Republican Sidney Barnes of Pulaski County attempted to strike a middle ground. He offered to limit the session to sixty-days unless two-thirds of the members elected to each chamber voted to extend the session. Lewis Williams, a Democrat from Sharp County who would serve in the next general assembly, thought that it was more reasonable to allow the “intelligence and patriotism” of legislators to guide them in the decision to extend the normal session beyond sixty days. He argued that the whole discussion of legislative sessions was a reflection of past abuses at the hands of previous general assemblies. In the end, Eakin joined with fellow Democrat Lewis Williams and Republican Sidney Barnes in supporting a provision allowing for a majority of the general assembly’s members to vote to extend the session. On August 14 the convention agreed to a two-third vote in order to extend the regular legislative session beyond sixty days. The measure passed 44 to 28 with 19 members not voting. Of the twenty-eight delegates voting in the negative two were Republicans, Silas Berry of Jefferson

⁴² “Journal,” 355.

⁴³ “Journal,” 355.

County and Volney Smith of Lafayette County. The remaining twenty-six were Democrats. Of the twenty-six Democrats eleven were lawyers, ten were farmers, three were doctors, and one (James Eagle) was a minister and a planter, but best known for being a minister. In the case of this vote the most significant factor appears to be political experience. The majority of those who opposed the measure, twenty, had held no previous political office. Once again, the convention thought better than to place the most onerous restrictions proposed into the constitution.⁴⁴

Nevertheless, the argument put forward by Madison prior to the convention to rein in centralization did not fall on deaf ears. The proposed legislative article took a section from the new constitution of Pennsylvania that would bar the general assembly from passing any local or special acts, just as Madison had urged. This meant that the legislature could not entangle itself in the affairs of counties, towns, and cities. Furthermore, the legislature could not grant divorces, nor could it make illegitimate children legitimate. This would also limit the legislature when it came to granting corporate charters. There would be no special laws where general law was applicable.⁴⁵

When it came to limiting centralization and embracing retrenchment the article on the legislative branch could be called a mixed bag. In some instances, more conservative language was rejected and more moderate language was advanced by Democratic delegates with prior governmental experience. The more moderate faction of the Democratic delegation, with the help of the small Republican faction, was able to keep the legislative article from being even more cumbersome for future leaders to navigate than it might have been. The 1874 Legislative Article differed in some ways from the article found in the 1868 Constitution, but the differences

⁴⁴ “Journal,” 356; “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

⁴⁵ “The Convention,” *Daily Arkansas Gazette*, August 16, 1874.

were minor when it came to procedural matters. The 1868 document had allowed the legislature to pass a variety of local or special laws, laws involving county governments, laws changing the venue in criminal or penal prosecutions, but had imposed some degree of limit on the issuance of special charters by the legislature. The 1868 Constitution had also barred the general assembly from granting divorces, for example, or changing individual's names. Sessions were to be biennial, but they were restricted to sixty days. The 1874 Constitution provided for a bicameral legislature that would meet every two years. The regular sessions of the general assembly were not to exceed sixty-days in length unless approved by a vote of two-thirds of the members elected to each house. Legislators were barred from taking any office, elective or appointive, during their elected term in office. The general assembly was prohibited from passing any special laws or local acts. By far the more significant restriction on legislative powers came not in the structure or procedure, but instead in the ceiling imposed on its power to tax or lend credit-issues that are discussed elsewhere.⁴⁶ The general assembly's ability to raise state taxes was limited to one percent of the assessed value of property.⁴⁷

A recorded vote was taken on Friday, August 20 concerning the legislative article. Only six delegates cast votes against the final product, all Republicans.⁴⁸

As with the executive, Redeemers were taking part in regional and national trends when it came to the legislative branch. In the South six states enacted new constitutions during this era. For instance, Alabama, Georgia, and Louisiana limited the length of their legislative sessions. Some made these limitations more draconian than others. Like Arkansas, other southern states

⁴⁶ Constitution of 1868, Legislative Article; "Journal," 722-726.

⁴⁷ Arkansas Constitution of 1874, Article III; Article XVI.

⁴⁸ "Journal," 417-418.

embraced limits on general incorporation through the banning of special laws or bills. Alabama constitution-makers were barred from passing special laws and/or local acts. In the case of Georgia, though, special acts were allowed but the legislation had to originate in the House and notice had to be given to the areas that would be affected. When it came to taxation Alabama constitution-makers and those in Texas, much like the general assembly in Arkansas, were limited when it came to the amount of revenue they could raise.⁴⁹

Yet many of these trends embodied in these Redeemer constitutions were national in scope. In West Virginia, constitution-makers limited the regular session of the legislature to just forty-five days, once again more restrictive than Arkansas, and barred special laws or local bills, though they did not cap the legislature's ability to raise revenue. In Pennsylvania, as we have already seen above, constitution makers barred special laws and local bills. In fact this document appears to have become the gold standard for many Arkansans. They also specifically barred the legislature from changing the venue in criminal and civil cases. (This provision is included in Arkansas's ban on special laws and local bills.) But, in Pennsylvania, constitution-makers, unlike those in Arkansas later the same year, did not limit the legislature's ability to raise revenue. In Missouri the new constitution, ratified in 1875, barred legislators from being appointed or elected to other offices during the term for which they were elected, just as Arkansas's 1874 constitution did. Missouri constitution-makers also barred the legislature from enacting special laws or local bills like the other constitutions of the era. Further to the west, in Colorado constitution-makers limited the length of the legislature's session at forty days with no means to

⁴⁹ Alabama Constitution of 1878, Article IV; Tennessee Constitution of 1870, Article III; Texas Constitution of 1876, Article III, Section 18, 45, 57, Article VIII, Section 9; Georgia Constitution of 1877, Article III, Part VI, Part XV, Part XVI, Article VII, Part VII; Louisiana Constitution of 1879, Legislative Department, Section 21, 25, 46, Revenue and Taxation, Section 209; Florida Constitution of 1885, Article III, Section 5, 20, Article IX.

extend the session, making this constitutional provision more restrictive than that found in the Arkansas constitution. They also barred the election or appointment to other offices during the term for which a legislator had been elected. Colorado also partook of the national trend to bar the legislature from passing special or local laws. Morton Keller confirms that state governments accordingly, shrank during the 1870s. Legislatures passed fewer bills, spent less money, and raised fewer taxes.⁵⁰

Ultimately, in Arkansas, the work of decentralization involved not simply limiting the governor's powers of appointment and limiting the legislature's power to tax. By creating powerful county judges, Democrats took authority out of the hands of the state government and placed it in the hands of local governments. County judges in Arkansas were according to Jay Barth and Diane Blair, "the closest thing to an uncrowned king that the American political system had to offer."⁵¹ The state was rural and sparsely populated, and county government, headed by the county judge exercised judicial and executive or administrative functions. Much of the money government spent in Arkansas, whether to build roads, enforce the law, or care for the indigent, was disbursed by county judges. This left the county judge a powerful provider of funds and employment in his respective county.⁵² Still, it is worth noting that if these local

⁵⁰ Illinois Constitution of 1870, Article IV: Legislative Department, Article IV, Section 22, Article IX: Revenue and Taxation, Section 8; West Virginia Constitution of 1872, Article VI: Legislative Branch, Section 22, 39, Article X: Taxation and Finance; Pennsylvania Constitution of 1874, Article III, Section 7, 8, 23, Article IX; Missouri Constitution of 1875, Article IV, Section 12, 53, Article X, Section 8; Colorado Constitution of 1876, Article V, Section 6, 8, 25, Article X, Section 11; Keller, *Affairs of State*, 114.

⁵¹ Diane D. Blair and Jay Barth, *Arkansas Politics and Government*, (Lincoln: University of Nebraska Press, 2005), 278.

⁵² Blair and Barth, *Arkansas Politics and Government*, 227-229; Moneyhon, *Arkansas and the New South, 1874-1929* (Fayetteville: University of Arkansas Press, 1997). 17-18.

governments' exercised the lion's share of public authority in Arkansas, their hands too were tied, as we shall see, when it came to taxation and indebtedness

Following the convention, no debate appears to have taken place among Democrats over the proposed constitution's executive and legislative provisions. In contrast to Texas, little criticism of the Redeemer convention's work appeared in the Democratic press between the end of the convention and the vote on its ratification. During the campaign to ratify the constitution the following notice appeared in the *Fayetteville Democrat*: "Vote for the new constitution—because it takes the power from the governor and places it where it properly belongs, in the hands of the people."⁵³ Yet even without much post-convention debate, the proceedings of the convention illustrate that Democrats were not as united as earlier accounts have suggested.⁵⁴

⁵³ *Fayetteville Democrat*, October 10, 1874.

⁵⁴ Keller, *Affairs of State*, 320.

Chapter 4

Retrenchment

Future legislators' hands were bound by Redeemer constitution-makers when it came to taxation, but Democrats faced a fundamental dilemma when it came to fiscal policy. Democratic rhetoric concerning excessive taxation had proven to be an effective centerpiece of the party's crusade against Reconstruction. Along with decentralization, "retrenchment and reform" became a battle cry in Arkansas, as elsewhere. Democrats had denounced Republican governments as being corrupt and wasteful. E. H. English a former chief justice of the supreme court, declared, "Our people, though upon their own soil, are like ancient Israel—unsympathizing task masters over us, and we are oppressed with toil and burdened with unexampled taxation, to fill the pockets whom we have no voice in choosing."¹ Like many Democratic organs, the *Gazette* linked high taxes and growing debt with corruption saying, "The people want no platforms but that of opposition to corruption, blackmail, extravagant expenditure, crushing taxation, the rigid discrimination against the old residents of the state, and in favor of honest administration of the government."² Sometimes the Democratic press likened corruption to compost, saying of Republican government, "It is mushroom growth and must perish of the corruption on which it feeds."³ In 1872, the *Gazette* said that the Republican government was a "pack of ravening wolves" that had bled the state dry with its corruption.⁴

The fiscal argument against Reconstruction could be a persuasive one. According to Eric Foner, Republicans responded to Democrats complaints concerning taxation by insisting they

¹ "Speech of Hon. E. H. English," *Daily Arkansas Gazette*, August 11, 1868.

² "The People Moving," *Daily Arkansas Gazette*, June 14, 1874.

³ "What the People of Arkansas Need," *Daily Arkansas Gazette*, August 11, 1870.

⁴ "The State of Arkansas for sale!" *Daily Arkansas Gazette*, June 13, 1872.

came only from the largest landowners. In reality, Foner says the issue “cut across class lines,” because the increased property taxation of the Reconstruction years burdened yeomen farmers as well as planters. This broad appeal made taxation—and the corruption that seemed to squander the money thus raised--an effective tool for Democrats as they sought to undermine Republicans. J. Mills Thornton argues, “fiscal policies that Republicans implemented, once in power drove, I think, white small farmers into the arms of the Redeemers.”⁵

But, this rhetoric was a double-edged tool. Once Democrats came to power, cutting taxes would tie their hands when it came to dealing with the state’s huge debt and providing basic services to the state’s exploding population. If Democrats were determined to cut taxes, they would have few options other than to repudiate at least a portion of the state’s debt and limit public services. Historians have emphasized how restrictive the 1874 Arkansas Constitution was in limiting taxing and spending, Tom DeBlack declaring, “the state’s power to tax was severely limited.”⁶ Yet Democrats were not single-minded on this subject, some perhaps realizing they could only go so far and still do the public’s business. As a result, their constitution was not as draconian as some conservatives in the convention would have liked.

Taxation had been an especially effective issue to conjure with because Arkansas had a tradition of minimal government. The main source of state and local revenue during the antebellum period were property taxes. However, Carl Moneyhon argues, leaders “viewed

⁵ J. Mills Thornton, “Fiscal Policy and the Failure of Radical Reconstruction in the Lower South,” In *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, J. Morgan Kousser and James M. McPherson, (New York: Oxford University Press, 1982), 350-352, 378; Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988), 415-416.

⁶ Thomas A. DeBlack, *With Fire and Sword, Arkansas: Arkansas, 1861-1874* (Fayetteville: University of Arkansas Press, 2002), 224.

taxation as potentially the greatest threat to property and sought every means to avoid increases.”⁷ In 1837 the general assembly enacted a one-eighth of one percent tax on the assessed value of property and limited county taxes to a maximum of one-half of one percent. When Arkansas planters were adversely affected by the panic of 1857, the general assembly lowered the state’s tax rate to one-sixth of one percent while leaving the maximum rate in counties untouched. There was support to reduce tax rates even further but the governor vetoed the measure.⁸

This insistence on minimal taxation made it difficult for Arkansas to manage its large debt. In 1836, the first general assembly chartered the Arkansas State Bank and Arkansas Real Estate Bank, attempting to address the state’s need for easy credit. The Arkansas Real Estate Bank and the Arkansas State Bank were capitalized by the sale of three million dollars in state bonds that would be repaid with interest. Bond sales never met expectations. In fact, following the Panic of 1837, the general assembly was forced to authorize an additional one million dollars’ worth of bonds. The state retained little control over the day-to-day operation of the banks but would be obligated for their debts should they fail. Their management was suspect from the very beginning. Larry Schweikart argues, “Lands given as collateral were in fact highly overvalued or even worthless.”⁹ John Wilson, the Speaker of the House, not only served as the first president of the Real Estate Bank but was one of its largest debtors. The Real Estate Bank, after becoming overextended, had dubiously borrowed money from the North American Bank

⁷ Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Baton Rouge: Louisiana State University Press, 1994), 84-85.

⁸ Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas*, 84-85.

⁹ Larry Schweikart, *Banking in the American South from the Age of Jackson to Reconstruction* (Baton Rouge: Louisiana State University Press, 1987), 51.

and Trust Company of New York, compounding its problems.¹⁰ Ultimately, both banks failed. By the spring of 1842 a group of fifteen trustees were appointed to oversee the bank's assets. The bank remained open until 1855 when the state took full control of its assets. This experience led the state to enact its first constitutional amendment in 1846, which banned any bank from being incorporated or established in the state.¹¹ On October 10, 1858, Governor Elias N. Conway received a report that the principal and interest on the State Bank had grown to \$1,239,526.82, and it would continue to increase.¹²

Arkansas's fiscal burdens grew dramatically during the Civil War and Reconstruction. During the war years, the state's revenue declined while expenses grew.¹³ In 1866 Democratic-Conservatives captured the general assembly and reduced the state's rate of taxation back to what it had been on May 6, 1861 when the state left the union. Following the ratification of the 1868 Constitution, Reconstruction Republicans increasingly relied on ad valorem taxation.

¹⁰ Under increased burden from more than \$3,000,000 in new loans, the bank offered unsold bonds valued at \$500,000 as collateral for a loan from the North American Bank and Trust Company in New York City. The bank actually got a loan for \$121,300. The North American Bank and Trust Company, in a dubious transaction, at best, then sold the collateral to a London financier named James Holford for \$300,000, Arkansas argued that due to the fact that the bonds had been collateral for a loan valued at much less, the state was not liable for the bonds. This transaction was not technically legal, but the Arkansas Supreme Court under the leadership of Chief Justice English ruled that the state was liable for the full amount of the bonds, setting off a financial drama that would continue until the Fishback Amendment in 1883 repudiated the state's debt.

¹¹ In practical terms, this ban meant that financial business was in the hands of factors, merchants, and moneylenders or left to banks in locals such as New Orleans. These banks had no regulation at all and as Larry Schweikart points out, they often had short lifespans.

¹² George H. Thompson, "Reconstruction and the Loss of State Credit," *Arkansas Historical Quarterly* 28 (1969): 293-294; Ted R. Worley, "The Control of the Real Estate Bank of the State of Arkansas, 1836-1855," *Mississippi Valley Historical Review* 37 (1950): 69; Jerry E. Hinshaw, *Call the Roll: The First One Hundred Years of the Arkansas Legislature* (Little Rock: Rose Publishing, 1986), 62-63.

¹³ Gary M. Pecquet, "State Finance in Arkansas, 1860-1865" *Arkansas Historical Quarterly* 48 (1989): 69; Jerry E. Hinshaw, *Call the Roll*, 62-63.

Taxation had been limited prior to the war with the prewar tax on land valuation set at .166 percent, but the 1868 general assembly levied a tax of 1.425 percent on property valuation. This rate dropped in 1871 to .95 percent but that was still many times the antebellum rate. When it came to county tax maximums, they were set at two percent for rural areas and 2.25 percent for urban areas.¹⁴

Yeoman farmers had paid relatively low taxes prior to the war, the majority of the tax burden instead being borne by landowners' wealthy enough to own slaves. These landowners had paid a property tax on their slaves who were their single largest source of wealth. J. Mills Thornton and Michael Perman note that landowners of all types shouldered the tax burden after the war. Yet even these higher taxes could not keep up with spending, given Arkansas's struggling economy. Moneyhon shows that state expenditures rose at an unprecedented rate. Radical Republicans moved to honor the antebellum debt while adding fresh debt of their own as part of their efforts to develop a school system, to promote economic development through subsidizing railroads, and generally remake Arkansas in their Republican image. Prior to the war the state spent \$1,000,000 annually but within five years of Radical Republican rule expenditures rose to two million dollars. Bonded indebtedness, two million dollars before the war, came to top \$10 million under Radical Republican rule.¹⁵

¹⁴ *Acts of Arkansas*, 1866-67, 67-68, 195; Paige E. Mulhollan, "Arkansas General Assembly of 1866 and its Effects on Reconstruction," *Arkansas Historical Quarterly* 20 (1961): 335;

¹⁵ Michael Perman, *The Road to Redemption: Southern Politics, 1869-1879* (Chapel Hill: University of North Carolina Press, 1984), 214-230; Moneyhon, *The Impact of The Civil War*, 253; Thornton, "Fiscal Policy and the Failure of Radical Reconstruction in the Lower South," 352.

This higher tax burden and growing debt made inviting targets for Democrats. Charges of “extravagance” were common in the Democratic press. The *White River Journal* from Des Arc in Prairie County complained in 1870, “We cannot understand the reform which consist in doubling our taxation and shows nothing for its result: except suits against the county for double the amount of tax, and the sleek appearance of the officials of the county court.”¹⁶ In another reference to the county courts, the *Gazette* said “The county tax although limited to one and one half percent for ordinary purposes is really without limit, because the law provides that when a county owes a debt it may also levy a tax to pay the interest on that debt, or pay the whole of such debt.”¹⁷ On August 15, 1868 the *Gazette* published an article calling out Republicans for their tax policy saying that the entire system was unjust due to the state’s taxpayers not having any say in the government. Here Democrats were making a fiscal argument that extended beyond high taxes and corrupt wasteful spending. Many African Americans owned little or no taxable property but were allowed to elect the officials who levied taxes, while many property owning taxpaying whites had little control of government either because they were disfranchised ex-Confederates or were outnumbered by black voters in their own communities. “Taxpayers who have no voice in the matter, are made to foot the bill.”¹⁸ Large numbers of voters who owned no property at all could elect governments that could turn around and spend, waste, or steal money largely raised from the propertied, thus redistributing wealth. On February 11, 1874 the *Gazette* had printed a list of Reconstruction leaders it claimed owned no property and paid no taxes, including state senator James Mason (though he was, in fact, the mixed-race son of Elisha Worthington, Arkansas’s largest slaveholder in 1860).

¹⁶ “From Prairie,” *Daily Arkansas Gazette*, March 11, 1870.

¹⁷ “Taxes! Taxes! Taxes!” *Daily Arkansas Gazette*, August 7, 1868.

¹⁸ “Incendiary,” *Daily Arkansas Gazette*, August 15, 1868.

The *Gazette* put the words of the *Little Rock Republican* to good use to make a point.

The Republican ‘frankly admits’ there has been ‘considerable extravagance and mismanagement’ in the radical rule of the state and it promises now that ‘efforts will be made to change all this and that a rigorous policy of economy and of reduction in the rate of public taxation shall henceforth be the order of the day.’ This is surprising in the light of the action of the last legislature, which increased taxation to a considerable figure, the levy in this city of Little Rock being six and a half percent upon the assessed value of all property—the valuation itself being excessive.¹⁹

Democrats sought to paint as bleak a picture as possible when it came to the state’s finances. In attacking growing debt, they often suggested it had been aggravated by Republican corruption.

Once again, from the *Gazette*: “Things have come to be so bad they cannot get worse. The treasury has been robbed until the source of credit is dry, and those whose occupation it has been to steal must go to work or go hence.”²⁰ Under the heading, “A Warning” the *Gazette* declared. “The ordinary mind cannot comprehend the vast amount of villainy and corruption which the Cairo and Fulton [a railroad subsidized by the state], and the Holford bond robbing crowd is capable; their tactics, to one who has watched them throughout their career, are easily seen through.”²¹

Redeemers’ fiscal crusade carried with it at least implicit promises of tax relief once Democrats returned to power, but constitution-makers would also have to address the massive debt if they were going to put the state on a solid footing. The opportunity presented itself on Monday August 10 when the Finance and Taxation Committee presented their proposed article to the convention. The committee proposed that the general assembly not have the power to levy

¹⁹ “THE Republican “frankly admits” there has been “considerable extravagance and mismanagement” in the radical rule of this state; and it promises now that “efforts will be made to change all this, and that a rigorous policy of economy and of reduction in the rate of Public taxation shall henceforth be the order of the day,” *Daily Arkansas Gazette*, November 13, 1873.

²⁰ “Sweet Art the Uses of Adversity,” *Daily Arkansas Gazette*, March 31, 1874.

²¹ “A Warning,” *Daily Arkansas Gazette*, June 24, 1874.

a tax that exceeded one percent on the state's property and that was not to exceed one-half of one percent after 1878 (One-half of one percent also represented the highest tax rate during the antebellum period in the state.). This would be the first time a maximum tax rate had been stipulated in an Arkansas Constitution. Yet Democrats set the initial maximum tax rate (1%) allowed above the 1871 rate of .95%, indicating some willingness to compromise amidst the party's rhetoric of retrenchment. Democrats were more stringent toward local government. Towns, cities, and counties were allowed to levy one-half of one percent for general expenditures and, upon a vote of the people, could levy an additional one-half of one percent to pay indebtedness that existed at the ratification of the constitution. School taxes were to be capped at five mills. Furthermore, no law was to exempt any property, except for places of worship and public property from taxation. As part of their ongoing effort to provide more accountability, the committee put forward a clause stating that no money could be paid from the treasury until an appropriation had been passed. Furthermore, money could not be appropriated for more than two years at a time. Following the presentation of the majority report Mr. Thompson of Woodruff County attempted to present a minority report but no record of this report remains, leaving many questions as to what some members of the committee sought to change.²²

The article led to divisions within the Democratic majority. J. G. Frierson of Cross County, Ben Chism of Sarber County, J. R. Scott of Pope County, and T.W. Thomason of Washington County praised the finance committee for placing restrictions on the general assembly's ability to raise taxes. Scott and Chism both argued that the people of the state wanted, even demanded, such limitations due to the lack of trust bred by Radical Republican legislatures.

²² "The Convention," *Daily Arkansas Gazette*, August 11, 1874; "About Taxes," *Daily Arkansas Gazette*, February 11, 1874.

Others, though, including some with legislative experience, such as former Governor Flanagan, and John Eakin of Hempstead County, both lawyers as well as significant property owners in their respective counties, opposed placing limitation on the general assembly's ability to raise revenue. Eakin argued that taxation was best left to the general assembly. At least one Democrat, John Scott, on the other hand, did not think the convention went far enough in limiting local taxation.

Believing that the limit to state tax should not have exceeded the sum of one-half percent and that the counties alike and towns more than one-fourth of one percent and having at all times voted and advanced the lowest possible figures but failed to carry the same shall not under protest when I see an alternative to redress the same vote aye.²³

Scott voted for the article but the constitution was not as restrictive as he would have liked. Thompson, a Woodruff County attorney, also thought it improper to limit the legislature—after all; it was the people's general assembly. He argued, "We must leave something to the good sense of the legislature and the people."²⁴ In fact, the convention struck the committee's proposal to lower the maximum to .5 % after 1878. It is worth noting that no motion to strike this proposal appears in the convention journal or in the press, meaning this decision was more than likely made in one of the frequent committee of the whole meetings which were off the record. But signifies that a majority of the convention was unwilling to place such stringent limits on taxation.

Thompson was also uncomfortable with the limits placed on local taxation. He offered a motion whereby local governments would be granted broader taxing power than originally offered by the committee. The *Gazette* reported that Thompson "was opposed to restricting

²³ "Journal," 646.

²⁴ "The Convention," *Daily Arkansas Gazette*, August 12, 1874.

legislators too closely. He did not want to embarrass cities and towns.”²⁵ The newspaper went on to explain that Thompson thought some cities and towns could operate on less, while others needed to be able to raise taxes. Under this proposal cities, towns, and counties would be able to levy up to five mills for general expenditures and another five mills for indebtedness that existed at the time of the constitution’s ratification. This would mean that local governments did not need a vote of the people to levy a separate tax for indebtedness. According to the convention journal as well as the *Gazette* Thompson’s proposal passed sixty-one to twenty with ten members not voting.²⁶ The roll call shows that eight Republicans opposed the measure while twelve Democrats voted against the motion. While not hugely significant, seven of the twelve Democrat votes in opposition possessed no prior political experience. Henry Bunn of Ouachita County voted in the negative but earlier in the debate he had actually sought to increase the amount that cities, towns, and counties with debt could levy. Bunn did not think that the proposal offered by Thompson allowed localities to tax enough. He proposed allowing such entities to levy up to ten mills. Mr. Horner of Phillips County said, “We are treading on precarious ground.”²⁷ He argued that it currently took one and a quarter percent to pay just the interest on the city of Helena’s debt. He thought placing limits on the amount of tax that a town, cities, and counties could levy would lead to judgments against Helena and similar entities in the United States Court and that too many people would have their property sold to pay their debts. He charged delegates with legislating on a topic that they knew little to nothing about. Former governor Rector, on the other hand, opposed the Bunn measure because he wanted firm limits on taxation. Rector argued that

²⁵ “The Convention,” *Daily Arkansas Gazette*, August 12, 1874.

²⁶ Interestingly the *Daily Arkansas Gazette* records the vote as 57 to 22 while the convention journal records the vote as 61 to 20 with 10 members not voting.

²⁷ “Journal,” 382-383; “The Convention,” *Daily Arkansas Gazette*, August 11, 1874.

Arkansas would be taxed too much. He claimed that one-half of one percent was enough to fund any municipality. When it came to paying previous indebtedness Rector said, “To make the limit two percent is to invite the legislature to go to the limit.”²⁸ Here Rector is talking about local rather than state taxation. Rector’s distrust of future officeholders showed here—he feared if they could legally go to two percent they would. Therefore he preferred a lower limit. The majority report had not provided a means for the state to levy a separate tax to pay the state’s debt though it did allow counties to levy a special tax to pay debts that were owed at the time the constitution was ratified.

It is significant that this debate focused on local as opposed to state taxation. Democrats were more concerned with local government than at the state level, where they could expect to win majorities. In counties with large black populations, taxes might continue to be levied by Republicans. This debate also shows that there was a divide between Democrats when it came to setting a limit on taxation. Though no Democrats argued for a higher limit on the general state tax rate, a number opposed a ceiling being placed in the organic law.²⁹

Despite its reputation for stinginess, Arkansas’s constitution proved more generous than some other Redeemer documents. In the Redeemer constitution of Alabama, constitution-makers set a maximum state tax of three-fourths of one percent and a maximum local tax rate of one-half of one percent. This tax rate, Michael Perman argues, set up a scenario whereby Alabama had no choice other than to repudiate at least a portion of their debt. In 1877 constitution-makers in Georgia placed their states maximum tax rate at one-fifth of one percent and it could only be raised if two-thirds of the state’s voters approved the measure. Texas

²⁸ “The Convention,” *Daily Arkansas Gazette*, August 11, 1874.

²⁹ “Journal,” 282-283; “The Convention,” *Daily Arkansas Gazette*, August 11, 1874.

constitution-makers set a maximum tax rate of one-half of one percent and a local tax of the same amount. To Arkansas's south, in Louisiana, Redeemers limited the state tax to no more than six mills while they allowed the local rate of ten mills. In allowing one percent Arkansas Redeemers proved to be more generous than those in other states. This in part may have had to do with Arkansas's exceptionally large developmental needs, given a booming population and primitive infrastructure. Due to these needs, constitution makers may have thought they had no choice but to concede the state greater power to tax, despite their retrenchment rhetoric. Democrats could not cut taxes as much as they would have liked.³⁰ Constitution-makers also limited revenue by placing the state's assessment power in the hands of local officials, who might well be responsive to the wishes of their community's large landowners.³¹

Delegates to the 1874 convention also grappled with a state debt estimated by the state auditor, Republican Stephen Wheeler, at more than twenty million dollars. This debt was broken into two categories, an undisputed portion of the state debt that stood at slightly more than six million and a second, disputed, portion that stood at more than eighteen million dollars. To fully understand the extent of Democrats' dilemma one must realize that the state's taxable property was valued at only \$104,560,292 in 1874. At rate of 1%, (and Democrats did not end up taxing at 1%), this property would produce revenue in the amount of \$1,014, 682. In 1874 it took \$848,240 to pay the interest on the debt leaving only \$167,000 to pay for state services.³²

³⁰ Alabama Constitution, Article XI, Section 3 & 4; 1877 Georgia Constitution, Article VII, Section VII; 1879 Louisiana Constitution, 49-50; 1876 Texas Constitution, Article XIII, Section 9; Michael Perman, *The Road to Redemption*, 201.

³¹ Moneyhon, *Arkansas and the New South: 1874-1929* (Fayetteville: University of Arkansas Press, 1997), 19-21.

³² Hinshaw, *Call the Roll*, 62-63.

Not surprisingly, Democrats were far from likeminded on what to do about the debt. Indeed, no issue divided the party more in these years than whether the debt should be repudiated or some settlement reached to preserve the state's credit. The Democratic press offered suggestions from Arkansas Democrats. On July 8 "A" wrote in the *Gazette* that the convention should appoint a three-person board of financiers to investigate the state's indebtedness and then negotiate some form of settlement with bondholders. The writer argued that all efforts should be made to determine what "we honestly owe."³³

However, paying only "just debts," or debts that Arkansas unilaterally deemed legitimate proved far more popular with rank-and-file Democrats in the period leading up to the convention. On July 18, the *Gazette* published a letter urging the convention to "explicitly" decide which debts were just and pay the principal and interest on those debts alone. When it came to the issue of the state's remaining debt and the question of future credit the writer said, "Arkansas cannot afford to repudiate any of her just debts, but beyond that we should not be asked to go. Let us act honorable, and there will be no trouble in building up a good credit abroad."³⁴ This Democrat may have had an overly simplified understanding of the national and global credit markets.

On May 30 the *Fort Smith Herald* said of the debt question, "It is a fight and a race for our liberties—for the heaven-born right to govern ourselves, and to free our State from the hordes of plunderers who have lorded it over us so long."³⁵ The *Southern Standard* of

³³ "Southern State Finances," *Daily Arkansas Gazette*, July 1, 1874; "The Convention," *Daily Arkansas Gazette*, July 18, 1874.

³⁴ "State Finances," *Daily Arkansas Gazette*, July 18, 1874.

³⁵ "Constitutional Convention," *Fort Smith Herald*, May 30, 1874.

Arkadelphia called on constitution-makers to embrace repudiation as well, comparing the state's debt situation to that between freedom and slavery saying, "There is no middle ground."³⁶

Based on analysis of the Democratic press there does not seem to have been as much of a debate within the Democratic Party prior to the convention over the debt as there would be in the decade afterward. There seem to be few voices saying that the state would be irreparably harmed if the whole debt was not paid or some form of compromise not reached with the state's creditors. This is perhaps not surprising. It would be difficult for Democrats to pay the debt and keep their promise of tax relief.

Still, repudiation would dominate much of the debate over the Finance and Taxation article with some Democrats supporting "out-and-out abandonment" of the state's debt. W. D. Leiper of Dallas County stated "I desire to relieve the state forever from the payment of all fraudulent claims and thus deliver the people all (illegible) taxation to be collected for the payment of claims they do not owe."³⁷ Allan Witt of Van Buren County said

I am in favor of refusing to pay any and all fraudulent debt, and we have sufficient evidence to know or grounds to believe that the bonds mentioned in Section 3 are fraudulent and hence I am in favor of settling this question by this convention now and forever.³⁸

Section three of the proposed article would bar the general assembly from appropriating money or levying a tax to pay for bonds issued under the 1868 railroad act passed by the Republican legislature, the 1871 levee act, or the 1869 attempt to refinance the Holford bonds. J. G. Frierson of Cross County sought to strike this section, arguing that only the courts could determine if these debts were just or not. The motion carried fifty-eight to twenty-one with

³⁶ "The Convention—The Constitution," *Southern Standard*, June 20, 1874.

³⁷ "Journal," 526.

³⁸ "Journal," 526.

twelve delegates abstaining. This is another instance of the constitution being less restrictive than some Democrats wished. Of those Democrats who sought a more restrictive constitution, nineteen appear to support repudiation. In this instance, twelve were farmers, five were lawyers, and two were medical doctors. However, a slight majority of farmers in the convention supported the motion by Frierson to strike section three of the article. This is important because it challenges, to some degree, the argument that agrarian interest would have automatically favored repudiation as essential to keeping taxes on their land low.³⁹

Yet no Democrat went on record calling for the payment of these state debts in full. Democrats were divided—but the division seemed to center more on the question of repudiation of those debts deemed as unjust in the organic law of the state versus leaving the question to future legislators to determine once a court had determined the legitimacy of said debt.⁴⁰ Former Governor Henry Rector offered language that would bar the legislature from raising taxes or appropriating funds to pay debts that were ruled illegal by the courts. W. D. Leiper sought to expand the resolution offered by Rector as follows “for the payment of any bonded claims against the state, until the legitimacy of such claims shall have been established by the court.”⁴¹ But the amendment was rejected eighteen to fifty-five with eighteen members not voting. Next, the original resolution put forward by Rector was rejected thirty-eight to forty-six with fourteen members not voting. Three Republicans voted to support this resolution while twenty-seven Democrats voted for the measure. The majority of these Democrats, seventeen, were farmers, seven were lawyers, two were doctors, and one was a minister. When it came to those delegates

³⁹ Moneyhon, *Arkansas and the New South*, 17-20.

⁴⁰ Moneyhon, *Arkansas and the New South*, 24-27; “The Convention,” *Daily Arkansas Gazette*, August 29, 1874.

⁴¹ “Journal,” 527.

opposing the measure, eight were Republicans and thirty-eight were Democrats. A majority of those Democrats opposing the measure, sixteen, were lawyers. Twelve Democrats who were farmers voted against this effort to enshrine even a mild form of repudiation in the constitution, again complicating the nation that landed interests drove repudiation.⁴²

The debate among Democrats continued. R. Pulliam of Sebastian County sought to bar the state from paying either the principal or interest on bonds approved by the legislature in 1869 or 1874 to refinance the remaining debt from the Real Estate Bank and the Arkansas State Bank. William Fishback, a leader of repudiation efforts in subsequent years, supported the motion. He argued that the vote of August 28 did not settle the issue in any way. Furthermore, he argued that Democrats began the convention in near unanimous support of repudiation and that this support had diminished due to “undue influence” from outsiders, though Fishback did not specify who these outsiders were. A roll call vote was taken on Pulliam’s motion on the morning of August 31. The measure was defeated twenty-two to fifty-one with eighteen members not voting. Of the twenty-one votes for the motion, fourteen were from landed interests. Mr. Howell of Johnson County, a farmer, sent the following explanation of his nay vote.

As regards the debt we owe the American Trust company, more generally known as the Holford bonds, the debt had been paid. If there is anything due on the \$120,000, after ascertaining the amount paid on the bonds or coupons, I wish the state to pay it. The remainder I wish to wipe out, as we have never received any consideration for the balance of \$300,000.⁴³

Mr. Hanna a delegate and lawyer from Conway County voted against the measure, the *Gazette* reported, “Not because he was opposed to the measure, but for the reason that he feared the incorporation of this as a section in the constitution might bring to bear an influence against it

⁴² “Journal,” 527-530; “The Convention,” *Arkansas Daily Gazette*, August 29, 1874.

⁴³ “The Convention,” *Daily Arkansas Gazette*, September 1, 1874.

which might defeat its final establishment as the fundamental law of the state.”⁴⁴ A group of leading Democrats, J. W. House, J. N. Cypert, W. W. Mansfield, and S. P. Hughes sent a joint statement explaining their negative votes.

Mr. President: On the proposition to repudiate the bonds known as the Holford bonds, we vote No. First—because we don’t think it is a question that this convention should have anything to do with. Second—because we are under the impression that the state is legally and morally bound to pay the sum of \$123,000, with interest thereon from the date said sum was obtained from the North American Bank and Trust company, upon deposit of the five hundred one thousand dollars’ bonds (illegible) by the state in 1840, and endorsed to the Real Estate Bank of Arkansas, less the interest already paid upon the bonds as funded; and believing the state, like as individuals, should have a most (illegible) regard for the payment of just and legal debts we are unwilling to say, by word or act, that the state shall not assume payment of all just and legal debts, and if the state is not legally bound to pay said amount, the future legislatures coming directly from the people, will have ample power to protect the state from the payment of the same.⁴⁵

But Mr. Sorrels of Scott County, a doctor, voted for the measure saying, “I voted aye, because I believe the Holford bonds are illegal, and should be repudiated. I am in favor of this convention shouldering the responsibility, and relieving the state at once and forever from this burden.”⁴⁶

Despite enthusiasm within the party and convention for repudiation, and the seeming refusal of any delegate to straightforwardly support full payment of the debt, a majority of Democrats, then, kept repudiation out of the constitution. They opted instead for a mild provision allowing the legislature to “from time to time, provide payment of all the just and legal debts of the state.”⁴⁷ It is obvious that constitution-makers held deep concerns over repudiating the state’s debt and the long-term impact such a move would have on the state. This debate foreshadowed years of debate.⁴⁸ William Fishback who had been the lead proponent of including repudiation in

⁴⁴“The Convention,” *Daily Arkansas Gazette*, September 1, 1874.

⁴⁵ “The Convention,” *Daily Arkansas Gazette*, September 1, 1874.

⁴⁶ “The Convention,” *Daily Arkansas Gazette*, September 1, 1874.

⁴⁷ Arkansas Constitution of 1874, Article XVI, Sec. 2.

⁴⁸ Arkansas Constitution of 1874, Article XVI, Sec. 2; “Journal,” 546-548; Moneyhon, *Impact of the Civil War and Reconstruction on Arkansas*, 252-253.

the constitution continued along with other Democrats to agitate for repudiation even earning the label the “Great Repudiator.” In 1879, the general assembly passed his amendment to the state constitution repudiating much of the states debt, though Governor Augustus Garland and then William Miller opposed the amendment. Eventually in 1884 the voters of Arkansas, 119,806 to 15,492, approved the amendment.

Other Southern states took a similar route, usually before Arkansas did but not always as completely. In Georgia Democrats regained control of the general assembly in 1872 and declared part of the state debt, the portion connected to a certain class of bonds, repudiated as being fraudulently and illegally issued. The general assembly of 1875-76 added additional bonds to the list, and it has been estimated that approximately \$7,746,000 worth of debt was repudiated. In 1877 an amendment was added to the Georgia Constitution placing repudiation in the constitution. In South Carolina, the legislature enacted the Consolidation Act in 1872. This act repudiated approximately \$5,965,000 worth of bonds and funded what was seen as just debt. In Florida the debt arose primarily from \$4,000,000 worth of state bonds associated with two state railroad companies that later defaulted. The Florida legislature did not repudiate these bonds, but in 1876 the state’s high court did find that the bonds had been issued improperly and as such violated the state constitution. In Alabama legislators opted to scale down the debt, in essence repudiating a portion of the state’s debt amounting to roughly \$3,705,000. In total, they scaled down the state’s total debt by approximately \$5,185,000. In Louisiana, the legislature reduced

the state debt from \$24,356,339 to \$15,000,000 in 1874. In 1875, the legislature moved to repudiate part of the remaining debt, declaring that it had been fraudulently issued.⁴⁹

In addition to addressing existing obligations, Arkansas Democrats also debated over government power to create further debt through raising salaries, through new bonds. In Arkansas, constitution-makers prohibited the state, cities, counties, and towns from loaning their credit for any purpose. They also included the salaries of the state's constitutional officers in the constitution so they could not be raised without changing the constitution. Constitution-makers in Arkansas also forbid the treasurer to pay any debt without an appropriation having been agreed to by the general assembly.⁵⁰

Constitution-makers of the era elsewhere in the South as well as the North and West also, sought ways to limit the possibility of their states again going deeply into debt. In Georgia and Texas, they placed limits on the amount of debt that the state could allow. In Louisiana, the state debt was capped at \$15,000,000 and in South Carolina voters amended the constitution to bar essentially all debt. In Florida, constitution-makers limited the use of debt to repelling invasions, just as the above mentioned states, and stipulated that debt could only be incurred to redeem bonds at a lower rate than they had been issued. West Virginia's 1872 Constitution used similar language as southern constitutions saying, "No debt shall be contracted except to meet casual deficits in the revenue."⁵¹ Arkansas's constitution did not contain such restrictions, meaning in this instance, in addition, it was more generous than many of its counterparts.

⁴⁹ B. U. Ratchford, *American State Debts* (Durham: Duke University Press, 1941), 184-191; Thorton, "Fiscal Policy and the Failure of Radical Reconstruction," 383-385; Perman, *The Road to Redemption*, 213-216, 184-188.

⁵⁰ Moneyhon, *Arkansas and the New South*, 19

⁵¹ West Virginia Constitution of 1872, Article X.

The politics of retrenchment were not limited to the Reconstruction South. As Eric Foner noted, the scope of government grew in the North in ways, such as corporate subsidies and public education expenditures, that were similar to what took place in the South during Reconstruction. This led to a growing tax burden and debt there, too. “Between 1860 and 1870, the tax burden tripled in five Northern states, quintupled in Michigan, and rose by six times in New Jersey.”⁵² Morton Keller found that northern Democratic Parties, too, were calling for retrenchment and at times even “home rule.” At the same time that southern states were being redeemed northern states were undergoing a liberal transformation. This transformation saw a shift away from stronger governments and increased levels of government spending and debt.⁵³

After much discussion and a substantial amount of disagreement, the Financial and Taxation Article was read for a third time on the morning of September 3. The final version provided the general assembly could not levy a tax greater than one percent just as the committee had proposed, but without reduction after 1878. Delegates then voted on the final passage of the article. The article was approved, despite the rancorous debate, a margin of seventy-two to six with thirteen delegates not voting. The following delegates voted in the negative, Butler of Pulaski, Barnes, Blackwell (Democrat), Downs (Democrat), Doswell (Democrat), and Perkins. In the end the vast majority of Democrats supported the article. This support cannot diminish the significant disunity that the Democrats exhibited during the debate over the article, but rather

⁵² Foner, *Reconstruction*, 469.

⁵³ Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: Harvard University Press, 1977), 556-557.

shows that willingness existed to move forward with other issues once the majority of the caucus had spoken.⁵⁴

Following the convention, a campaign got underway to make sure the constitution was ratified. On October 3 the following lines appeared in the *Fayetteville Democrat*: “Vote for the constitution, and save your state from ruin. Vote for the constitution and put the government in the hands of the people. Vote for the constitution and reduce your taxes \$200,000 per annum.”⁵⁵ The next week the barrage continued: “Vote for the constitution because it will save the people at least half million in the way of taxation.” No serious opposition to the constitution when it came to the article appeared in the surviving elements of the Democratic press.⁵⁶

If Arkansas constitution-makers seem a bit more generous than their counterparts in other redeemed states, their successors in the general assembly would be less so. From the first legislature to meet after the convention, Arkansas Democrats taxed at considerably below the rate prescribed in the constitution, and taxes dropped further over time. Arkansas’s property tax went from 8 mills in 1874 to 4 mills by 1885, as low as Florida and lower than Louisiana. Municipalities and counties were limited when it came to raising revenue, which in turn limited their ability to offer services to their population.⁵⁷

What is missing in most scholarship on the constitution is a consideration of the path not taken. In this case, the path not taken is one in which the Constitution of 1874 was as restrictive and conservative as other redeemer states when it came to financial and tax policy. It is hard to

⁵⁴ “Journal,” 645-646; “The Convention,” *Daily Arkansas Gazette*, September 4, 1874; “The Convention,” *Daily Arkansas Gazette*, August 30, 1874.

⁵⁵ *Fayetteville Democrat*, October 3, 1874.

⁵⁶ *Fayetteville Democrat*, October 10, 1874.

⁵⁷ Moneyhon, *Arkansas and the New South*, 19-21.

think of the 1874 Arkansas Constitution as a moderate document, but viewed through the lens of this path not taken, it may very well be. But at the same time it did not prevent later lawmakers from being very stingy indeed.

Chapter 5

The Judicial Branch

In addition to reining in executive power and limiting government's power to tax, Democrats saw the judiciary as a major piece of the equation when it came to redeeming the state. District and lower court judges exercised enormous power, often being more consequential than state officials in the shaping of daily life. Following the Civil War cases had to be adjudicated that might once have been left to the authority of slaveholders. Matters involving the rights of landowners and labor had to be sorted out as a new sharecropper system emerged. The developing infrastructure of a market economy, with railroads extending through the state, also drew Arkansans into more complicated legal relationships.¹

Delegates to the 1874 Arkansas Constitutional Convention primarily dealt with two judicial issues. First, constitution-makers took part in a vigorous debate concerning the method by which judges and other judicial officers such as clerks would be chosen. The second issue that yielded a degree of controversy dealt with powers and jurisdiction that state, circuit, and local courts would exercise. Debate over the method of selecting the judiciary and what jurisdiction it would exercise raises questions concerning scholars' suggestion of a shared elite agenda or a single agrarian agenda in an overwhelmingly rural state, and of a unified Democratic voting bloc at the convention.

¹ Patrick G. Williams, *Beyond Redemption: Texas Democrats after Reconstruction* (College Station: Texas A & M University Press, 2007), 36-39; Eric Foner, *Reconstruction, America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988), 355-356; Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: The Belknap Press, 1977), 343, 354-356.

When it came to selecting the state's judiciary, the divisions among the state's Democratic-Conservatives, both officeholders and the rank and file, became evident. The fact that the convention was more fractured than contemporary or modern accounts suggest could be attributed to many factors—including the state's varied history with respect to judicial selection for example. The most important reason, though, remains that the Conservative or Democratic Party contained people from diverse backgrounds and interests, and in different parts of the state Democrats faced very different political situations. Party rhetoric seemed to favor popular election of judges, but those from areas less securely Democratic areas might prefer appointment by a Democratic state government, or, at very least, at-large election.

Arkansas's use of varying means of choosing judges throughout its relatively short history contributed to a public divide over the best method. The 1836 Constitution granted the Arkansas General Assembly the right to select judges of the Supreme Court and Circuit Court by a majority vote of each house. The first legislative session established six circuit court districts. These judges were to serve a term of eight years. In 1848 the constitution was amended to provide for the popular election of circuit judges, introducing some degree of democratic reform. This was part of a broader regional and national pattern. In *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790-1890*, Timothy S. Huebner makes the case that the movement to elect or democratize the selection of judges found expression in both the antebellum North and the South. Mississippi led the way by electing appellate judges beginning in 1832, four years before Arkansas achieved statehood. This trend of electing judges must have been well known to the drafters of the 1836 Arkansas Constitution, though they defied it.

However, Alabama, Florida, Tennessee, Texas, and Virginia all embraced the trend prior to the Civil War.²

This limited degree of democratic participation was continued in the 1861 secession constitution, though the governor was given the power to appoint the justices of the supreme court with advice and consent of the senate. They remained appointed. They did, however, reduce the term in office for justices from eight years to four. When drafting a constitution to meet the guidelines of Presidential Reconstruction in 1864, delegates changed this provision to allow the qualified voters of the state elect the judges of the supreme court.³

Radical Reconstruction, however, saw seemingly contradictory developments. The 1868 Constitution established a Supreme Court with five justices. The chief justice was to be appointed by the governor with the advice and consent of the senate, but the four associate justices were to be elected by the qualified voters of the state, with all justices serving a term of eight years, providing a more democratic method of selection than previous constitutions. This constitution also established circuit courts but left the structure of these courts up to the legislature. During its first meeting the Reconstruction legislature the general assembly provided for ten circuit court districts, whose judges, rather than elected, were to be appointed by the governor with the advice and consent of the senate for a term of six years. On the county level, the position of county clerk was to be elected by the qualified electors and serve a term of four years while each county was to elect two justices of the peace, also for a term of four years. Reconstruction Arkansas thus, spanned the spectrum when it came to judicial selection. The

² Timothy S. Huebner, *The Southern Judiciary Tradition: State Judges and Sectional Distinctiveness, 1790-1890* (Athens: University of Georgia Press, 1999), 3.

³ Arkansas Constitution of 1861, Article VI, Section 7; Arkansas Constitution of 1864, Article VII, Section 7.

governor was given the authority to appoint the chief justice with the advice and consent of the senate, while the remaining four justices were to be elected by the qualified voters of the state. Circuit judges were appointed, while county officials exercising judicial power were elected. Given the large regions of the state that contained many native whites, relatively small black populations, and few Republicans, it is not surprising that the Reconstruction legislature preferred some judges to be appointed at the state level rather than elected locally. As noted, anger concerning the appointment powers of the governor under the 1868 Constitution proved to be a constant theme for Democrats.⁴

Democrats made plain their unhappiness with the Reconstruction judicial system. Letters critical of the Reconstruction judiciary appeared in the *Daily Arkansas Gazette*, the Democratic mouthpiece, and as such it is safe to assume that these letters came from Democrats. On May 6, 1873 the *Gazette* published a story that first appeared in the *Washington Telegraph*. “The list of newly appointed circuit judges...has been very discouraging, to the members of the legal profession especially to all our citizens who have ardently desired a restoration of confidence in the ability and cool impartiality of our courts.”⁵ Here the writer in the *Telegraph* was upset over the circuit court judges who Governor Baxter had appointed. The author went on to say of the newly appointed judges, “they are politicians of the most virulent stamp, and are not learned in the law—nor even tolerably, nor do they so portend.”⁶

The *Pocahontas Weekly Observer* from Northeast Arkansas printed a broad endorsement of the elective principle. “This we take to be of vital importance, as under our form of

⁴ Arkansas Constitution of 1836, Article VI; Acts of Arkansas, 1836; Acts of Arkansas, 1868; Constitution of 1868, Article VII.

⁵“The Judiciary,” *Daily Arkansas Gazette*, May 6, 1873.

⁶“The Judiciary,” *Daily Arkansas Gazette*, May 6, 1873.

government, all just authority is presumed to be exercised, and every provision engrafted into the constitution, by the consent of the people as the origen [sic] and source of power.”⁷ On May 30 the *Fort Smith Herald* called for the convention to “restore our republican institutions to their former purity...and once again let the people rule.”⁸ In Scott County in Western Arkansas, the sentiment was the same. Frank Bates a self-described conservative candidate for the convention submitted a campaign card to the *Fort Smith Herald*.

We want a Constitution which will reduce the number, term and salaries of office in our state. We want a constitution under which every officer from Constable to Governor, including the Chief Justice, shall be elected by the people: In short, we want a Constitution under which no man can hold an office except he be the choice of the people expressed at the ballot-box.⁹

Bates was defeated by J. W. Sorrells by thirty-one vote, but Sorrells, held many of the same views when it came to an elected judiciary. All three counties spoken for--Randolph, Sebastian, and Scott--were reliably Democrat.¹⁰

But some Democrats were less certain about the virtues of popular election when it came to judges. Democrats in regions and states with large black populations could well prefer appointive office holding, since by 1874 they could count on Democrats controlling state government. C. Vann Woodward notes cases in which Redeemer Democrats sought ways to strip areas with African-American majorities of political power by using appointive systems. As he points out this came at the expense of non-elite whites who also lost their right to choose their judges. For example in North Carolina black counties were stripped of their ability to elect local

⁷ “Constitutional Convention,” *Weekly Observer*, June 30, 1874.

⁸ “Regnant Populi—Our Duty,” *Fort Smith Herald*, May 30, 1874.

⁹ “The Voters of Scott County,” *Fort Smith Herald*, June 6, 1874.

¹⁰ Scott County was 1.6% black in 1870 and cast here votes for the Democrat in a majority of the elections analyzed.

officials but at the same time overwhelmingly white western counties also lost this privilege.¹¹

Arkansas's widest circulating Democratic newspaper, for one, clearly had its doubts about electing judges. On June 18, 1873 an article appeared under the heading "Popular Election of Judges" pointing to a recent election for the judiciary in Illinois in which a judge who ruled in favor of a railroad company and against a group of farmers just prior to the election, was defeated. This author called on Arkansas to not move to an elected judiciary for fear that judicial opinions would become captive to popular opinion.¹²

Other Democrats, too, preferred an appointive judiciary. On June 4 the *Daily Arkansas Gazette* published a letter to the editor that called on the delegates to consider lifetime appointments for the judiciary. The author, his identity and home county unknown, sought to return to the appointive system provided for in the 1836 Constitution. He argued that this method, and only this method, would remove the judiciary from the political process, "voters, especially those who have controlled the state since the war, don't have or want, let alone a way to get enough information to make responsible choices."¹³ Here he clearly seems to be talking about black and white Republicans. According to the 1870 census the state had eight counties with African American majorities. Many of these counties could be expected to elect Republicans, black or white, to local offices. The correspondent said he hoped that lifetime appointments would insulate judges from partisanship as well as the changing opinion of popular majorities. Delegates should look no further than antebellum South Carolina, where according to

¹¹ C. Vann Woodward, *Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951), 54-55; also see, Michael R. Hyman, *The Anti-Redeemers: Hill-Country Political Dissenters in the Lower South from Redemption to Populism* (Baton Rouge: Louisiana State University Press, 1990), 87-97; Williams, *Beyond Redemption*, 50-53.

¹² "Popular Election of Judges," *Daily Arkansas Gazette*, June 18, 1873; "A Card," *Tri-Weekly New Era*, April 3, 1872.

¹³ "The Convention: Judges for Life," *Daily Arkansas Gazette*, June 4, 1874.

him crime was low and the prospect of liberty and happiness was equally high (at least for the minority that wasn't enslaved), to see that judges would then and only then be able to dedicate their lives to the study of law and focus on justice rather than partisan politics.¹⁴

A letter from Washington in Hempstead County, which had a relatively large African American population and had elected black representatives to the Reconstruction legislature, argued Democrats had good reason to prefer judges appointed by a Democratic governor, rather than elected by local majorities. "E" made a case that an appointive judiciary was the single most important issue to face the upcoming convention. He argued that Arkansas had suffered enough from a lack of judicial stability. These Democrat fears concerning Republican votes appear to have had some validity when voting patterns are taken into consideration. In 1872 U.S. Grant had garnered 1,357 votes to Horace Greeley's 664 votes in Hempstead County.¹⁵

Others stressed continuity with the past in urging delegates to proceed with caution when devising a method of judicial selection. A letter in the *Gazette* from G expressed concern that they would embrace risky, untried methods.

"The Convention: Judges for Life," *Daily Arkansas Gazette*, June 4, 1874; ¹⁴ Arkansas 1870 Census, Population by Race and County, 1870-1900, <http://www.aiea.ualr.edu/arkansas-census-data.html?id=164:population-by-race-and-county-1870-1900&catid=1&tmpl=component> (accessed 7-2-17).

¹⁵ In 1876 Hempstead County remained competitive. Democrat Samuel Tilden received 1,567 votes to Republican Rutherford B. Hayes's 1,355 votes. In the 1880 election for governor Hempstead County cast a majority of her votes, 1,775, for the Greenback candidate for governor while giving the Democrat John Churchill 1,711 votes. In 1882, Republican W. D. Slack defeated Democrat J. H. Berry, 1,671 to 1,498. In the 1884 presidential election the county provided 1,748 votes to Democrat Grover Cleveland and 1,727 votes to Republican James G. Blaine; 1860 Census.; 1870 Census of Arkansas; Blake J. Wintory, "African-American Legislators in the Arkansas General Assembly, 1868-1893," *Arkansas Historical Quarterly* 65 (Winter 2006): Table 1: African Americans in the Arkansas State Senate, 1868-1893.; Table 2: African Americans in the Arkansas House, 1868-1893; *Biennial Report of the Arkansas Secretary of State*, 1872, 1879-80, 1882, 1884; W. Dean Burnham, *Presidential Ballots, 1836-1892* (Baltimore: The John Hopkins Press, 1955) 282-283.

The old constitution provided that the judges of the supreme court should be chosen by the general assembly of the state and were chosen for eight years. This plan worked well. It secured the chosing [sic] of competent men for the position.

I would suggest that the new constitution provide that the judges of the supreme court be chosen by the governor, subject to the approval of the state senate, and for a fixed term, not less than eight years. The senate might be constituted an advisory board, to cooperate with the governor in the election of supreme judges.

This plan, too, would avoid the other extreme advocated by some of our friends, of electing the judges for life. Which would make them too independent.¹⁶ Other letter writers expressed a similar urgency in wishing to insulate the judiciary from the electorate. “A pure judiciary is as necessary to good government as pure air is to good health.”¹⁷ This author opposed the election of Supreme Court Judges for a couple of reasons. First, human nature would lead to the election of men who were unworthy of such a position and, second, he argued that lawyers who could not make a proper living at the law would end up being elected as judges. He suggested that circuit court judges be appointed by the Supreme Court and approved by the governor. He declared, “lawyers, like women, are the proper judges of each other, and the means of knowing and forming just estimates of professional skill and weight of each other.” The electorate by contrast would be too moved by prejudices and party feelings to choose wisely.¹⁸

Another letter, this one from “Palmetto,” (the name suggest he was from South Carolina, a black-majority state), published one day after the convention opened, would have undoubtedly been read by delegates. He argued that only lifetime appointment of judges—Supreme Court and Circuit Court—could remove the judiciary as far as needed from the people. He urged the convention to place the responsibility of selecting judges in the hands of the general assembly.

¹⁶ “The Convention,” *Daily Arkansas Gazette*, June 23, 1874.

¹⁷ “The Judiciary,” *Daily Arkansas Gazette*, June 23, 1874.

¹⁸ “The Judiciary,” *Daily Arkansas Gazette*, June 23, 1874.

“Palmetto” would have such judges be subject to impeachment for poor behavior but protected from swings of popular opinion.¹⁹

Even as delegates began their work, letters continued to appear in the press objecting to a democratically elected judiciary. A letter written by Solomon F. Clark appeared in the *Gazette* on July 21. The 1870 Census, suggest Clark lived in Pulaski County. Clark urged the delegates to adopt the judiciary article found in the 1836 Constitution with the legislature appointing supreme court and circuit court judges. He acknowledged that some revision might prove necessary but argued such changes would prove minor. A Democrat from Pulaski County might be wary of an elected judiciary since the county contained a large black minority and a strong Republican Party.²⁰

While some correspondents supporting an appointive judiciary spoke about the volatility of the electorate in general terms, others were more specific about the sort of voters they did not want electing judges. On August 2 the *Daily Arkansas Gazette* published a letter under the header, “An Appeal from Desha,” a delta county whose population was 64% black in 1870.

In view of the fact that those counties bordering on the Mississippi River, and where the negro voters are largely in the majority, have no representative voice in the present state constitutional convention, on behalf of the people living in these counties. It is true these counties have individuals in that convention who draw pay and vote, but virtually represent no interest in common with the true people. We are more interested in redistricting of the state for judicial purposes than any other thing.²¹ Here the letter writer expressed a fear shared by other Democrats from African American majority counties—that white people were without representation when they were represented, or judged, by black men or by those elected with black votes. “An Appeal from Desha,” also asserted: “These river counties are rich, but with overwhelming negro ascendancy, all offices

¹⁹ “Convention Notes,” *Daily Arkansas Gazette*, July 15, 1874.

²⁰ “Regnant Populi,” *Daily Arkansas Gazette*, August 2, 1874; 1870 Census.

²¹ “An Appeal from Desha,” *Daily Arkansas Gazette*, August 2, 1874.

filled by them, and all officers under their control, nothing is left to our people, but to abandon their homes and property.”²² Nevertheless, the correspondent had a suggestion for dealing with judges if the convention resorted to popular election.

From present indications, we expect all judicial officers to be made elective—the propriety of which, under all surrounding circumstances, I very much question—and if this should be the case, it is the indispensable duty of the convention in redistricting the state for judicial purposes to arrange it, as to give the honest conservative element the majority of the votes in each district. This can be easily done, without the least gerrymandering.²³

Democrats would have had no illusions about their electoral chances in Desha County. In 1872 Grant had received 745 votes to Greeley’s 413.²⁴

Clearly, Democrats were divided. Many party members having railed against Reconstruction’s “centralization,” committed to an elective judiciary. However, others preferred an appointed judiciary. By this time, Democrats could be comfortable in their party’s ability to secure a statewide majority. Delta Democrats could trust a Democratic governor to appoint suitable judges but not necessarily trust voters from their own districts to make acceptable choices. To these men, any Democratic commitment to elective judges and, more generally, decentralization could be a disaster in districts where the party could not muster a majority. This

²² “An Appeal from Desha,” *Daily Arkansas Gazette*, August 2, 1874.

²³ “An Appeal from Desha,” *Daily Arkansas Gazette*, August 2, 1874; 1870 Census.

²⁴ Matkin-Rawn, “The Great Negro State of the Country: Arkansas’s Reconstruction and the Other Great Migration,” *Arkansas Historical Quarterly* 72 (2013): 4-5; In the 1876 presidential election Desha County cast 675 votes for Republican Rutherford B. Hayes and only 206 for Democrat Samuel Tilden. In 1880 Republican James A. Garfield drew 775 votes to Democrat Winfield Scott Hancock’s 286. At the same time Desha County overwhelmingly voted for Democrat John Churchill in the 1880 election for governor giving him 582 votes to the Greenback’s 43 votes. In 1882 the number of votes cast was much larger and the county gave Republican W. D. Slack a majority over Democrat J. H. Berry, 1,217 to 452. In the presidential election of 1884 James G. Blaine the Republican won 635 votes to Democrat Grover Cleveland’s 230 votes: *Biennial Report of the Arkansas Secretary of State*, 1872, 1880, 1882.

challenges the idea of agrarian interest uniformly favoring decentralization in favor of local government inevitably in the hands of the landed elites.²⁵

Support for an appointed judiciary was less pronounced at the convention than in the Democratic press, but still the Democratic delegation proved far from like-minded. Early in the convention, on July 17, Hugh French Thomason, a Democrat from Crawford County who had previously served in the legislature, had been a Know-Nothing nominee for congress, and had served in the Confederate Congress, introduced a resolution addressing the widespread support among Democrats for elective office holding and decentralization.

WHEREAS, The people of the state of Arkansas, in calling this convention, were actuated mainly by the desire to restore the government of the state to the people, to who it rightfully belong; and

WHEREAS, Official patronage has been a blighting curse to our state, and the appointing power has been used for the purpose of advancing party interests, and often in utter disregard of the public welfare; therefore,

Resolved, That it is the fixed and steady purpose of this convention to reflect the unmistakable will of the people, and to adopt a constitution that shall provide for the election, by the people, of all officers from the governor to township constable during the coming fall, thereby destroying official patronage and insuring a government by the people and for the people.²⁶

This expression of Democrats' anti-centralization rhetoric came from a county that was just over 88% white in 1870. In 1872 Crawford County had voted for Grant over Greeley, 918 to 589, but it was growing more Democratic.²⁷ John Eakin of Hempstead County, a contested county whose

²⁵ Moneyhon, *Arkansas and the New South, 1874-1929* (Fayetteville: University of Arkansas Press, 1997), 18.

²⁶ "Journal," 69.

²⁷ In 1876 Crawford County cast 957 votes for Democrat Samuel Tilden and 663 votes for Republican Rutherford B. Hayes. Four years later, in 1880, Democrat Winfield Scott Hancock drew 1,138 votes to Republican James A. Garfield's 974 votes. When it came to the states gubernatorial election in 1880 Democrat John Churchill won 1,287 votes while the

voters Democrats might not want to rely on, moved to amend the resolution proposed by Thomason to clarify that it would not tie the hands of delegates later in the convention, and that they could, in fact, debate and select any method of judicial selection they wished. This angered Thomason who refused to accept the amendment. Former governor Harris Flanagin of Clark County (which had voted Republican in the last presidential election²⁸) raised objections to the election of Supreme Court Justices. But Thomason refused to budge and Eakin withdrew the amendment. Forrest E. Brown of Clayton County along with Henry M. Rector of Garland County agreed with Thomason but the resolution was premature.²⁹ James Eagle, of Lonoke County, sought to straddle the proverbial political fence. Though Lonoke County, like Garland, would prove a reliable Democratic county, Eagle explained that, while voting for the provision, he sought to reserve the right to select another mode of judicial selection later in the convention. Despite the opposition of members such as Frierson, Eakin, Flanagin, and J.N. Cypert of White County the resolution ultimately prevailed.³⁰

Greenback candidate won 1,135 votes. Two years later in the 1882 election for governor Democrat J.H. Berry won 1,645 votes to Republican W. D. Slack's 1,426 votes. In 1884 Democrat Grover Cleveland bested Republican James G. Blaine, 1,438 to 1,193, *Biennial Report of the Arkansas Secretary of State*, 1872, 1880, 1882.

²⁸ In the 1872 presidential election Clark County cast 1,324 votes for Republican Grant and 796 votes for Liberal Republican Greeley. Four years later, in 1876, the county cast 1,357 votes for Democrat Samuel Tilden and 796 votes for Republican Rutherford B. Hayes. In 1880 Clark County voted for Democrat Winfield Scott Hancock over Republican James A. Garfield, 1,499 to 1,075. That same year in the election for governor, Democrat John Churchill won 1,286 votes to the Greenback candidates 528 votes. This pattern held two years later when the county chose Democrat J. H. Berry over Republican W. D. Slack, 1,469 to 574. The county proved more competitive in the 1884 presidential election but still went Democratic selecting Grover Cleveland over Republican James G. Blaine, *Biennial Report of the Arkansas Secretary of State*, 1872, 1880, 1882.

²⁹ Garland County was founded on April 5, 1873 so no returns are available for the presidential election of 1872. It would vote Democrat thereafter, *Biennial Report*..

³⁰ White County voted for the Democratic candidate in each of the elections examined both prior to the convention and after, making it a solidly Democratic stronghold. 1870 Census; "Journal, 69, 81-82."; "Regnant Populi," *Daily Arkansas Gazette*, July 18, 19, 1874; *Biennial*

Unfortunately, as is the case with most constitutional conventions, much of the nuts and bolts work was conducted in committee, for which no records remain. But a few votes are on the record during the convention that show Democratic division on the issue. The first, on July 18, 1874, was a roll call vote related to the above-mentioned proposal offered by Hugh F. Thomason of Crawford County to make all offices subject to election by the citizens.³¹

Two white Democrats from majority black districts (J. A. Gibson of Arkansas County; and John J. Horner of Phillips County) and three white Democrats (Robert Goodwin and H.G.P. Williams of Union County and Convention President Grandison D. Royston of Hempstead County) from counties with nearly evenly split white and black populations, voted against referring the resolution to the judiciary. But they did not vote to kill Thomason's resolution outright, perhaps unwilling to go on record against the elective principle. A majority of Democrats clearly wished to reassure their constituents that they were committed to it early in the proceedings. Gibson claimed "he wanted to show the people what they were going to do."³² Only five members, all white Democrats (Butler of Independence, Blackwell of Perry, Brown of Clayton, Garland of Nevada, and Lester of Lawrence), voted against the Thomason resolution. Of these five only Brown of Clayton offered an explanation, saying that he thought the resolution was premature. Interestingly, all five represented solidly white districts. This support of those from contested districts may have been an effort at Democratic solidarity, but more likely, these Democrats saw this as a non-binding resolution early in the convention.³³

Report of the Arkansas Secretary of State, 1872, 1879-80, 1882, 1884; Burnham, Presidential Ballots, 278-281,

³¹ "Regnant Populi," *Daily Arkansas Gazette*, July 19, 1874.

³² "Regnant Populi," *Daily Arkansas Gazette*, July 19, 1874.

³³ "Journal," 79-82; "Regnant Populi," *Daily Arkansas Gazette*, July 19, 1874.

Some members made clear that the public expected Democrats to establish an elective judiciary. J.A. Gibson of Arkansas County sent a more detailed explanation of his vote in favor of Thomason's resolution.

First, I vote for the resolution because I am in favor of the people electing every office from Governor down to Constable.

Second, I am anxious to let the people of the state know as soon as possible how the convention stands on this important matter, and especially to let my constituents know that I will carry out the pledge I made to them on this subject as well as any other pledge made in my canvas before them.³⁴

W.S. Hanna of Conway County declared that the people had expressed their desire for an elected judiciary during the Constitutional Convention campaign.³⁵

Despite the sentiment in the Democratic press supporting an appointive judiciary, the article proposed by the committee provided for an elective judiciary. There was no recorded objection to this nor were there any amendments offered from the floor of the convention to alter such a plan.³⁶

On July 22 W. D. Leiper of Dallas County offered a resolution, however, intended to square an elective judiciary with the fact of Republican or black majorities in certain districts.

That the circuit courts of this state shall consist of ten circuits and the judges thereof. The judges shall be elected by the qualified electors from the state at large.³⁷

The at-large process Leiper proposed, then, would have circuit judges elected by the state's Democratic majority.

³⁴ "Journal," 82.

³⁵ "Journal," 82; "Regnant Populi," *Daily Arkansas Gazette*, July 19, 1874.

³⁶ "Journal," 10, 115; "Regnant Populi," *Daily Arkansas Gazette*, July 23, 1874; "An Appeal from Desha," *Daily Arkansas Gazette*, August 2, 1874..

³⁷ "Journal," 98.

However, Democrats would prefer another way to limit the impact of African American voting in the election of judges—gerrymandering the circuit court districts in such a manner that most would have white majorities, robbing blacks of the opportunity to elect black or Republican judges. Democrats from black majority counties reached out to Flanagin as the chair of the judiciary committee. Met Jones of Pine Bluff (in Jefferson County) wrote to Harris Flanagin on August 4 demanding that the committee on the judiciary find a way to make sure that judicial districts could elect Democratic judges. He suggested how the districts might be gerrymandered in a manner so that Jefferson would not elect the incumbent or another Republican judge. He concluded his letter by saying “We had hoped that the judges would be elected at large and still hope so but if this idea is obnoxious to the majority of the members of the convention we hope for a circuit that will enable us to elect good men.”³⁸ On August 7, former Confederate general D. H. Reynolds of Lake Village (a failed candidate for the convention) wrote a similar letter to Flanagin. Reynolds argued that the “people” of his delta region had not been represented for some time and asked that the judiciary committee find a way to make sure that Chicot County, which was 75% African American according to the 1870 census, would be represented by “good judges” in the future. A group of citizens from Pine Bluff sent Flanagin a telegram on September 3. ‘If we are placed in a circuit where compelled to take a Radical Judge a new constitution will be no advantage to us county rings are only able to oppress us when we are cut off from protection of circuit judges our only protection is in the integrity of the circuit court.’³⁹

The convention’s original plan divided the state into ten circuit court districts. A motion to create an eleventh circuit was proposed by Mr. Williams of Jefferson, a black Republican, to

³⁸ Letter from Met Jones to Harris Flanagin, September 3, 1874, Flanagin Papers, Arkansas State Archives; Letter from D. H. Reynolds to Harris Flanagin, August 7, 1874,

³⁹ Telegram, September 3, 1874, Flanagin Papers.

encompass Desha, Arkansas, Lincoln, and Jefferson Counties, creating a solidly African American district. Under the original ten-district plan Desha and Lincoln were to be placed in the tenth circuit along with Chicot, Dorsey, and Dallas Counties. This would have meant the tenth circuit court district would have been almost equally split between white and black voters. Mr. Killgore of Columbia County argued that the resolution would create unequal districts and require more work from some judges. However, Kilgore's resolution to return to the original districts was defeated on a voice vote and the state would be divided into eleven judicial districts. Evidently, a large number of Democrats found reason to support a black Republican's proposal, because it would quarantine a large number of African American voters in a single circuit, leaving adjacent ones whiter. Elsewhere Democrats appear to have relied not on "packing" but "cracking," or the practice of spreading like-minded voters across multiple districts to dilute their power. In the first circuit, Phillips County, 68% black, was placed with five white majority counties. In the second circuit Crittenden County, 67% black, was placed with seven majority white counties. In the eighth circuit, eight counties were included, but only one had a black majority, Little River County, 57% black, which negated any chance of a black circuit court judge being elected. The ninth circuit contained one black-majority county, Lafayette. Lastly, the tenth circuit joined Chicot County, 74% black, with five white majority counties. In these districts, Democrats were able to dilute the voting power of African Americans to such an extent that they would not have to worry about the election of black or Republican circuit court judges.⁴⁰

⁴⁰ 1870 Census, Population by Race and Conty; "The Convention," *Daily Arkansas Gazette*, September 4, 1874; "The Convention," *Daily Arkansas Gazette*, September 6, 1874.

Delegates also considered the jurisdiction judges would exercise. A vote available for analysis involves the jurisdiction of justices of the peace. On August 18, W. J. Thompson a lawyer from Woodruff County sought to expand the exclusive jurisdiction of justices of the peace from one hundred to two hundred dollars just as the constitution of 1868 had provided. After the motion T. W. Thomason, one of the few delegates who was a member of the Grange, sought to amend it, arguing that if a justice of the peace knew the law well enough to be given original jurisdiction up to one hundred dollars then he surely knew the law well enough to be given jurisdiction up to five hundred dollars. John Eakin of Hempstead County opposed the measure. Eakin, a lawyer of some note from a competitive county, argued that keeping the limit low was designed to protect the rights of people who owed more than one hundred dollars. The substitute offered by T. W. Thomason, was defeated 50 to 32. A majority of delegates did not support expanding justices of the peace's original jurisdiction. Of the thirty-two members who supported the change, all were Democrats, except for Republican lieutenant governor Volney Voltaire Smith of Lafayette County. Moreover, Smith was the only delegate from a county with a black majority to support this change. All thirty-one Democrats supporting expansion of local courts' jurisdiction were elected for majority white districts where Democrats did not have to worry about Republicans being elected locally. By contrast, four Democrats who represented black majority districts voted against expanding locally elected justices of the peace's jurisdiction along with four Democrats who came from districts with sizable African American populations. What is most striking is the fact that if twenty-eight Democrats from black majority districts and those from districts with a sizable black population were eliminated, the remaining Democrats would be nearly split evenly on the issue. This demonstrates one of the central arguments of this dissertation--that the Democrats were not united. It shows, too, that Democrats

from competitive delta counties were not uniformly convinced of the wisdom of, as Carl Moneyhon writes, “returning central authority to county and municipal governments, invariably controlled by local landed and commercial interests.”⁴¹

When the convention finished its work on the Judicial Article it differed substantially from that of the 1868 Constitution. All judges were to be elected under the 1874 document, in contrast to Reconstruction when the governor had appointed the chief justice and circuit judges. Delegates to the 1874 convention reduced the number of justices from five to three and made the chief justice elective. The office of prosecuting attorney was also made elective under the 1874 document. The framers of the 1874 Constitution created the position of judge of the county court, which, as noted above, would become an extraordinarily powerful position, locating considerable authority in Arkansas at the local level. This judge would be elected for a term of two years and would serve as the probate judge as well. Previously, under the 1868 Constitution, each township had elected two justices of the peace for a term of four years. The 1874 Constitution stipulated that they were to be elected for a term of two years. A justice was to be elected for every 200 individuals in the county. These justices were to assist the county judge when it came to matters of the expenses of the county, county taxes, and appropriating money for the county.⁴²

According to the *Daily Arkansas Gazette*, the article on judiciary was approved by a voice vote with no further debate on August 28. The debates and proceedings surrounding the approval of the Judiciary Article demonstrate that Democrats in the state and in the

⁴¹ Carl H. Moneyhon, *Arkansas and the New South*, 18-19.; “Journal,” 405.

⁴² Arkansas Constitution of 1868, Article VII; Arkansas Constitution of 1874, Article VIII; Blair and Barth, *Arkansas Politics and Government* (Lincoln: University of Nebraska Press, 2005), 277-278.

Constitutional Convention were far from unified. This debate, in the convention hall and particularly in the press, further demonstrates that race and geography played a critical role in these divisions within the Democratic Party.⁴³

When it came to organizing Arkansas's judiciary, constitution-makers were fully partaking of both regional and national trends. Most Redeemer constitutions provided for an elective judiciary. Alabama's 1875 Constitution provided that all judges were to be elected by the state's qualified voters for a term of six years. These judges had also been elected under the state's Reconstruction constitution. The Texas Constitution of 1876, by contrast, shifted the state from an appointive to an elective system. It would consist of a supreme court with original jurisdiction, a court of appeals, district courts, county courts, and courts of Justices of the Peace all popularly elected. In Georgia constitution-makers drafted a new constitution in 1877 and provided for an elected judiciary just as Arkansas, Alabama, and Texas had. The Georgia judiciary was to consist of the Supreme Court, superior courts, courts of ordinary, and justices of the peace. Louisiana had a larger black population, and its 1879 constitution, by contrast, enforced a mixed system of elected and appointed judicial officers. The Louisiana Supreme Court was to have five justices who were appointed by the governor with the advice and consent of the senate. Four of these judges were to be selected from Supreme Court districts while the chief justice could be chosen at large. The appeals court was to have two judges who were appointed by the governor while there were to be five district court districts each with an elected judge.⁴⁴

⁴³ "Journal," 518; "Constitution of the State of Arkansas," *Daily Arkansas Gazette*, August 29, 1874; "The Convention," *Daily Arkansas Gazette*, August 28, 1874.

⁴⁴ Alabama Constitution of 1875, Article VI, Section 1, 4, 12, 15, 23, 27; Florida Constitution of 1885, Article V, Section 1, 2, 5, 7, 15, 16, 17, 30; Georgia Constitution of 1877, Article VI, Section 1, Part 1, 3, Section 3, Section VII, Section X; Texas Constitution of 1876,

However, states across the nation, and not just in the South, embraced an elective judiciary. In Illinois constitution-makers drafted a new charter in 1870 that proposed an elected judiciary. Illinois in the past had used both an electoral and an appointive system when it came to the judiciary. Pennsylvania enacted a new constitution in 1874 with an elective judiciary. Missouri continued its system of an elected judiciary with its a new constitution of 1874. In Colorado's first constitution (1876) provided for a supreme court, district courts, county courts, and justices of the peace, all elected by popular vote. By enacting a judiciary system of elected judges and clerks, Arkansas constitution-makers were again taking part in common constitutional practices for the era, rather than just a Southern reaction against Reconstruction.⁴⁵

Following the approval of the judiciary article the Democratic press offered little in the way of discussion of the article. On September 15 the *Gazette* published an article with the heading "Words of Cheer" where the author offered words of encouragement about the judicial article, saying that the article would go a long way in making "Arkansas free, prosperous, and whole again."⁴⁶

Article V, Section 1, 2, 3, 5, 7, 15, 16, 19; Louisiana Constitution of 1879, Judiciary Department, Article 80, 81, 82, 83, 94, 96, 107, 121, 124.

⁴⁵ Illinois Constitution of 1870, Article VI, Section 1, 2, 6, 18, 22; West Virginia Constitution of 1872, Article VIII, Section 1, 2, 3, 10, 12, 17, 19, 27; Pennsylvania Constitution of 1874, Article V, Section 1, 2, 3, 11; Missouri Constitution of 1875, Article VI, Section 1, 2, 4, 5, 25; Colorado Constitution of 1876, Article VI, Section 1, 5, 6, 7, 11, 12, 13, 19, 21, 22, 25.

⁴⁶ "Words of Cheer," *Daily Arkansas Gazette*, September 15, 1874.

Chapter 6

The Right to Vote

The fact that most Democrats embraced elective office-holding did not necessarily mean they believed everyone should have the opportunity to vote or hold office. The question of African American voting, really the question of African American participation in civic life in general, underlay much of the division between political factions in the South following the Civil War. Democrats generally deplored black suffrage and saw black office-holding of any sort as tantamount to “negro rule.” As Story Matkin-Rawn has argued, for “negro rule” to prevail in the eyes of Democrats did not require that a county had a black majority. Even a small number of African Americans in a county, or a black man holding a single public office, could unsettle the political makeup of the county. J. Morgan Kousser has argued that Democrats who relied on even a small number of African Americans votes to be elected would need to appoint some blacks to office, thus weakening white supremacy. According to Alexander Keyssar many, if not most, white southerners saw black voting as an affront to two hundred years of law and tradition. Not only did this upend Southern tradition but it also threatened white Democrats desire to regain control of the region. Democrats in Arkansas did not differ from those in the rest of the region. Yet, like Redeemers elsewhere, the Democratic majority at the 1874 Convention did not restrict suffrage to the extent their party’s rhetoric might have suggested, disfranchisement instead coming some two decades later. While the 1874 Constitution has been seen by many to be a somewhat draconian document that attempted to return the state to a pre-war antebellum political foundation, the convention voted down efforts to impose a poll tax. This restraint was

not the product of respect for black citizenship however, but, rather, of purely political considerations.¹

From the beginning Arkansas had partaken of a broader “democratic” trends in voting rights for her citizens. Arkansas’s 1836 Constitution provided the franchise to every white male citizen of the U.S. who was twenty-one years or older and who had resided in the state for at least six months. Neither property, taxpaying, nor educational qualifications were added in the 1861 Arkansas Confederate constitution nor in the 1864 Constitution. The 1868 Reconstruction Constitution extended manhood suffrage to any male born in the U.S., black or white, or any naturalized male. Furthermore, any immigrant male who declared their intention to become a U.S. Citizen would be granted the right to vote, as was the case in a number of states with larger immigrant populations than Arkansas. Constitution-makers in 1868, just as in the state’s previous three constitutions, set the voting age at twenty-one.²

¹ Story Matkin-Rawn, “The Great Negro State of the Country: Arkansas’s Reconstruction and the Other Great Migration,” *Arkansas Historic Quarterly* 72 (2013): 5, 15-16, 21; Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000), 89, 91. Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Baton Rouge: Louisiana State University Press, 1994), 194-195, 247, 249; Thomas A. DeBlack, *With Fire and Sword: Arkansas, 1861-1874* (Fayetteville: University of Arkansas Press, 2002), 169, 227, 232-233; Moneyhon, *Arkansas and the New South: 1874-1929* (Fayetteville: University of Arkansas, 1997), 89; John William Graves, *Town and Country: Race Relations in an Urban-Rural Context, Arkansas, 1865-1905*, (Fayetteville: University of Arkansas Press, 1990), 48-49, 56-57; Michael Perman, *The Road to Redemption: Southern Politics, 1869-1879* (Chapel Hill: University of North Carolina Press, 2001), 10-21, 58-59, 151; C. Vann Woodward, *The Origins of the New South, 1877-1913* (Baton Rouge: Louisiana State University Press, 1951), 103-105; Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*, (New Haven: Yale University Press, 1974), 17.

² Arkansas Constitution of 1836, Article IV, Section 2; Arkansas Constitution of 1861, Article IV, Section 2; Arkansas Constitution of 1864, Article II, Section 2; Arkansas Constitution of 1868, Article VIII, Section 2.

From the advent of Radical Reconstruction Democratic-Conservatives in Arkansas had fervently opposed the extension of suffrage to black males. Jesse N. Cypert, a leading Democratic-Conservative from White County, opposed the franchise article as offered in the 1868 convention.

The negro is not the equal of the white man. In mind and body, the differences are striking, numerous, and insurmountable. Four thousand years ago he was exactly what he is to-day. All history demonstrates his utter incapacity for self-government, and his utter want of appreciation of free institutions. But beyond all this, our own experiences and the teachings of history inexorably point to this dreadful result. The investing of an inferior race with social and political equality is the stepping stone to miscegenation, and the consequent utter deterioration and degeneracy of the dominant race.³

Cypert went on to say that he had no ill will toward any black person but that it was “manifestly to the interest of the people of this state, white and black, to make no changes in its fundamental laws touching the elective franchise.”⁴

Democratic delegates in 1868 also objected to the creation of legislative districts with black majorities. Delegates pointed to the disfranchisement of the state’s “best,” presumably former Confederates, at the same time that a class who they considered woefully unprepared and incapable of taking part in government was granted the franchise. Conservatives also complained that political control of the state was being placed in the hands of “savage and ignorant hands.” According to delegates, black voters could elect governments largely sustained by taxes paid by white men.⁵

³ “Constitutional Convention,” *Daily Arkansas Gazette*, February 8, 1868.

⁴ “Constitutional Convention,” *Daily Arkansas Gazette*, February 8, 1868.

⁵ “How White Men Are Deprived of Representation,” *Daily Arkansas Gazette*, February 19, 1868; Joseph M. St. Hilaire, “The Negro Delegates in the Arkansas Constitutional Convention of 1868: A Group Profile,” *Arkansas Historical Quarterly* 33 (1974): 42; James Harris Fain, “Political Disfranchisement of the Negro in Arkansas” (Thesis, U of Arkansas, 1961), 7; Graves, *Town and Country*, 29-30; Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas*, 247.

The Democratic press also sounded the alarm over “negro rule.” In criticizing the 1868 Convention’s apportionment, the *Arkansas Gazette* suggested that to create black-majority districts was to entirely “deprive” their white residents of representation. On May 1, 1869 an article appeared in the *Daily Arkansas Gazette* entitled “Their Capacity for Self-government” arguing that blacks were not capable of governing themselves and were well aware of this fact. “The black people of this country ought to know, if they do not, that not only the white people of the south, but a very large number of white people of the north maintain that they are by nature unfit to exercise the elective franchise.”⁶ The author said that black voters were simply being used by those (typically northern newcomers) who sought to obtain and hold onto power through their votes, though aware of their unfitness to hold the franchise. “The very men who are using them as pliant tools to acquire power for the perpetration of all sorts of rascality would be the very first to testify against their qualifications to exercise the right to vote.”⁷ Another *Gazette* correspondent argued that black Arkansans would not use the right to vote in a patriotic manner.

Their conduct at the recent elections in this state is too fresh in memory. They went to the polls in companies, in double ranks, as men go into battle, and they cast their votes as soldiers fire their shots at the word of command and in the direction they are ordered. Probably of the thousands of votes cast by colored men in the last two or three elections in this city and county, not more than one or two hundred in all were prompted by the individual preference or opinion of the voters. The bulk of the voters cast their ballots by the order of a handful of white men who control the [Union] leagues.⁸

Democrats continued to argue that African Americans were pliable and under the control of a small group of white men who sought to use their votes to propel their own political agenda.

“Now that radicalism has accomplished all the good, or rather all the mischief, it can get out of

⁶ “Their Capacity for Self-government,” *Daily Arkansas Gazette*, May 1, 1869.

⁷ “Their Capacity for Self-government,” *Daily Arkansas Gazette*, May 1, 1869.

⁸ “Their Capacity for Self-government,” *Daily Arkansas Gazette*, May 1, 1869.

the negro, the next step will be to get rid of him altogether.”⁹ Here the writer said that there had been no sincerity in white efforts to end slavery and advance black equality. He accused radicals of making “the negro a hobby to ride into political power and break up and destroy institution our fathers established upon the basis of the federal compact and constitution.”¹⁰

For all this rhetoric, though, not all Democrats called for black suffrage restriction at this point. On the 10th of September 1870 conservatives meet at Hot Springs. Democrats’ concerns over white disenfranchisement were obvious at this meeting but resolutions were passed including one “accepting as definitely settled the franchise question as regards colored men, and favoring the restoration of the ballot to the disfranchised.”¹¹ This should not be assumed to signal that all Democrats were pleased or even accepting of black suffrage but simply that many of them did not foresee a means to reverse it once the Fifteenth Amendment was ratified.

The sense that at least in the short term nothing could be or should be done concerning black suffrage was shared by Democrats across the South who adhered to the New Departure (rather than “straight out”) wing of the party. In an editorial in the *Gazette* the author said,

The new departure simply recognizes a state of facts which every citizen knows does exist. The question of colored suffrage cannot possibly form any issue in the next canvass, because the ratification of the fifteenth amendment settled that. Being settled, that’s what we call a dead issue. It was a live issue in the canvass of 1868—one on which we were defeated. It has now gone beyond the recall of any party. It is dead. Where would be the profit in its resurrection?¹²

⁹ “The Future of the Negro,” *Daily Arkansas Gazette*, December 3, 1870.

¹⁰ “The Future of the Negro,” *Daily Arkansas Gazette*, December 3, 1870.

¹¹ “Conservative Meeting at Hot Springs,” *Daily Arkansas Gazette*, *Daily Arkansas Gazette*, September 15, 1870.

¹² “The Way to Success,” *Daily Arkansas Gazette*, July 30, 1871.

Some Democrats also hoped to attract the votes of propertied (and, thus, taxpaying) African Americans and those in patron-client relationships with whites.¹³ Furthermore, Arkansas Democrats had to be aware of the state's relatively small African American population and know that once former Confederates were reinstated white Democrats would govern Arkansas.

Still many Democrats hoped that if black enfranchisement could not be reversed, its impact could be limited by a taxpaying requirement. The editors of the *Southern Standard* published in Arkadelphia in southwest Arkansas declared "While we are in favor of the fullest and freest suffrage, yet we do not think that anyone who is not interested sufficiently in government to pay at least one dollar toward its support, should have no voice in the selection of those who levy taxes for others to pay."¹⁴

But others, probably anticipating that a large white majorities would be able to govern Arkansas and their own communities, could make their peace with the concept of allowing any male over the age of twenty-one to vote. On June 6 1874 the *Fort Smith Herald* printed a note to the voters of Scott County, in western Arkansas, from J.W. Sorrels, a candidate for the constitutional convention. "I am in favor of an election law that will forever secure the right of suffrage and the full exercise of that right to every male citizen over the age of twenty-one years, except insane persons and criminals."¹⁵

At the convention the urge among some Democrats to restricting the franchise dueled with other party member's belief that black suffrage was a fact of life or that suffrage restriction

¹³ "The Colored People," *Daily Arkansas Gazette*, September 6, 1871; "The Political Problem"; "The Way to Success," Eric Foner, *Reconstruction, 1863-1877* (New York: Harper and Row, 1988), 254, 313, 330, 416; Perman, *The Road to Redemption*, 77-79.

¹⁴ "The Convention—It's Duties," *Southern Standard*, July 13, 1874.

¹⁵ "To the Voters of Scott County," *Fort Smith Herald*, June 6, 1874; "What Arkansas is Saved From," *Weekly Observer*, July 14, 1874.

was unnecessary and even undesirable given the large white majorities to be found statewide and in most localities. While the draft franchise article submitted to the convention by the committee did not limit manhood suffrage, a faction of the convention wished to restrict the franchise to those who paid a poll tax. It is important to note, that the 1836, 1861, 1864, and the 1868 Arkansas Constitutions all contained provisions for a poll tax, in other words, a head tax in which each taxable individual paid the same amount, but payment was not a prerequisite for voting. In fact, many states levied a poll tax or head tax that was not linked to voting. Poll taxes, however, were always regressive, applying equally to poor and rich and being particularly burdensome to the propertyless. Eric Foner argues that a poll tax had been used around the world, and that in the Reconstruction Era the planter class sought to use them to reaffirm their dominant position-- charging freedmen high poll taxes forced them to work for wages. Those freedmen who did not work could be deemed vagrants and could then be forced to work in order to pay their tax bill. Furthermore, the revenue garnered by a poll tax would allow taxes on landed property to remain lower. Foner notes that not surprisingly African Americans opposed this form of taxation.¹⁶ But the very regressiveness of the poll tax is possibly what recommended it as a device for suffrage restriction, since African Americans were on average poorer than whites. However, a poll tax would burden poor whites equally with poor blacks, so Democrats often attempted to make the poll tax more palatable by promising the revenue would be directed to education.¹⁷

Jabez Smith of Saline County sought to insert a poll tax in the Franchise Article. Smith was an old line Democrat. He had been a delegate to the 1861 Secession Convention and had

¹⁶ Eric Foner, *Reconstruction, America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988), 206.

¹⁷ Eric Foner, *Reconstruction*, 366.

been elected to the State Senate representing Hot Spring, Montgomery, and Saline Counties in the 1866-67 legislative session. Other Democrats such as William D. Leiper of Dallas County supported this proposal. Leiper was a native of Pennsylvania but by 1870 had acquired real estate valued at two-thousand dollars, and, thus, had reason to oppose higher property taxes. He argued that paying a tax was in no way a restriction on voting but rather a way to contribute toward the cost of government. "One dollar is certainly liberal for all the protection they receive. This will obviate the necessity of a registration law, which stinks in the nostrils of every honest man in the state."¹⁸ This faction argued that opposition to a poll tax was nothing more than anti-tax sentiment, which many Democrats would have agreed with.

No Democrat at the convention directly called for restrictions to be placed on black suffrage. Furthermore, Democratic delegates never invoked the specter of "negro rule."¹⁹ But if Democrats were evasive as to the target of suffrage restrictions, Republicans knew right where the poll tax was aimed. J. Pennoyer Jones of Desha County, a black Republican, saw the use of a poll tax as a way to take votes from both blacks and newcomers. Jones and other Republicans saw the poll tax as a regressive tax that would leave economic and political power in the hands of a few. Republican William Murphy and George Perkins, African Americans from Jefferson County and Pulaski County respectively, thought that a poll tax was an affront to their race. Perkins said that black Arkansans had won the right to vote and expected to keep it. "The rights we acquired in 1868 we expect to maintain. It is a premeditated plan by this convention to take away as many of them as possible."²⁰ Republicans also expressed doubt that a poll tax would

¹⁸ "The Convention," *Daily Arkansas Gazette*, August 3, 1874.

¹⁹ Foner, *Reconstruction*, 205-206; Patrick G. Williams, "Suffrage Restriction in Post-Reconstruction Texas: Urban Politics and the Specter of the Commune," *The Journal of Southern History* 68: (2002), 35-39.

²⁰ "The Convention," *Daily Arkansas Gazette*, August 2, 1874.

help secure elections against fraud. W. L. Copeland, a black Republican from Crittenden County, stated that he did not see how a tax receipt could possibly provide any degree of protection against fraud. In fact, Copeland saw a much more sinister motive for the poll tax. “I heard a leading politician say he could carry Pulaski County every time if that law passed. It is simply fraud on a more gigantic scale than theretofore.”²¹ Ultimately, this would prove to be true, the poll tax being not only the chief mechanism of disfranchisement but also of electoral fraud through the first half of the twentieth century. The majority of Republicans appear to have been unified in their opposition to the implementation of a poll tax.

Many Democrats joined them. Some Democrats appear to have been philosophically opposed to the idea of a poll tax. John Horner, a white Democrat from Phillips County, argued that no man should have to pay to vote. Phillips County had a black population of 10,501 and a white population of 4,871, yet as John W. Graves has shown 3,296 votes were cast in favor of the convention and no votes were cast against. Horner has been elected as part of a fusion agreement with James T. White, the leader of the convention’s African American caucus, giving him at least a short-term stake in black voting. Horner expressed disbelief that paying a tax could diminish instances of fraud. Other Democrats had pragmatic reasons for questioning the wisdom of such a tax. William Fishback, a Democrat from Sebastian County, and William Thompson of Woodruff County expressed concern over Congress accepting such a provision. Arkansas’s 1868 readmission to the Union had prohibited changing the state constitution in such a way as would deprive a class of citizens of the right to vote. If provoked, they worried, the federal government would intervene once again in the affairs of the state. John Graves says, a majority of Democrats were unwilling to risk a repetition of the sort of events that had doomed the Murphy government

²¹ “The Convention,” *Daily Arkansas Gazette*, August 2, 1874.

in 1866-68.”²² The outcome of the Brooks-Baxter War might have illustrated the federal government’s growing disinclination to intervene in the South, but events in neighboring Louisiana would show that the more aggressive sort of Democratic recalcitrance might yet provoke it. More Democrats might have been willing to consider a poll tax had they felt assured that the federal government might not take a renewed role in state affairs.²³

On Monday, August 3, 1874 delegates defeated the push to insert a poll tax. The secretary of the convention did not record the roll call of the vote and neither did the *Daily Arkansas Gazette*. This makes the extent of Democratic divisions on suffrage to the poll tax impossible. Most likely this roll call was not recorded due to the fact that it was taken in a session acting as a committee of the whole. Generally, the intent of forming a committee of the whole was to keep discussion off the record. Therefore, it seems likely that Democrats wished to keep their positions and comments on this controversial subject out of the journal and the press. It should also be noted that there does not appear to be extensive support for suffrage restriction in the Democratic press leading up to or during the convention. The poll tax serves as yet another instance where a faction of Democrats--unfortunately we have no way of knowing how large a faction--tried but failed to make the constitution more restrictive.²⁴

The new constitution provided a liberal definition of who could vote. The 1874 Constitution allowed every male citizen or resident who had declared their intent to become a citizen, who was at least twenty-one years of age, who had lived in the state for at least twelve months, in the county for six months, and in the voting precinct for one month prior to the

²² 1870 Census; Graves, *Town and Country*, 47-49.

²³ Foner, *Reconstruction*, 554-555.

²⁴ “The Convention,” *Daily Arkansas Gazette*, August 4, 1874.

election, to vote. The residency requirement offered a subtle qualification on the right to vote, though, in this era of heavy black migration to Arkansas and transience among working people. Constitution-makers were clear that there would be no requirement for registration and that the right to vote could not be restricted by any military or civil authority. This is a reaction against the Reconstruction registration system. In order to register then an Arkansan had to be able to subscribe to an oath of loyalty to the U.S. that they had never supported the Confederate cause, given aid or encouragement to people hostile to the Union, held office in the Confederacy, and swear to defend the Constitution of the United States, against all enemies, foreign and domestic. It should also be noted that these registrars had been partisans and as such not inclined to help conservatives vote. No Democrats and very few Republicans favored registration in the 1874 Convention. In one sense, actually Democrats expanded the right to vote. In 1873 the 1868 Constitution had been amended to exclude “paupers” who received any kind of public assistance from voting. This was reversed in the 1874 Constitution.²⁵

Not only the voting rights of former slaves but those of immigrants preoccupied many Americans in this era. Delegates to Arkansas’s 1874 Constitutional Convention participated in this national discussion. Alexander Keyssar argues that no clear line of demarcation existed between citizens and aliens at the end of the eighteenth-century when it came to the franchise. The national government had allowed the unnaturalized to vote in the Northwest Territories as part of its effort to attract immigrants, and some state constitutions allowed “inhabitants” to vote. According to Keyssar, this pattern was in flux, however, and by the time Andrew Jackson left

²⁵ *The Constitution of the State of Arkansas* (Little Rock: P.A. Ladue, 1876), 7-9; U.M. Rose, *The Constitution of the State of Arkansas*, 179, 216, 248, 300; William P. Kladky, “Voting and Voting Rights,” *Encyclopedia of Arkansas History and Culture*, (Accessed 1-10-2017); Matkin-Rawn, “The Great Negro State of the Country,” 30-34.

office resident aliens were barred from voting in almost all states. With the growing German and Irish immigration of the 1840s, this pattern changed once again, with the Midwest leading the way. In 1848 Wisconsin became the first state to once again allow resident aliens to vote once they declared an intention to become citizen (Keyssar notes the state's high foreign-born population--thirty-five percent of the total). G. Alan Tarr states that states did this to attract population. This trend continued after the Civil War as more states in both the South and the West followed suit.²⁶

Multiple factions emerged during this debate. In 1836 constitution-makers had required residents to reside in the state six months prior to voting. This meant that unnaturalized citizens could vote after six months residence. In 1868 though, constitution-makers had embraced declaratory voting rights, meaning that a new immigrant had to only declare their intent to become a citizen in order to vote. Republicans may have held out some hope that new immigrants might be more receptive to their message and agenda than native-born white southerners were. Sidney Barnes, a white Republican from Pulaski County, expressed his support for the declarative franchise. Stripping voting rights of many immigrants, including immigrants who had voted to call the constitutional convention. Barnes had reason to worry. Pulaski County had high numbers of foreign-born residents, at least compared to other Arkansas counties. According to the 1870 Census Pulaski contained 3,013 foreign born residents. As for Democrats, former governor Harris Flanagin, one of the most respected members of the convention, supported this proposal saying, "Our future depends on our obtaining a large population. Fields are growing up in bushes in this state for the want of someone to cultivate

²⁶ G. Alan Tarr, *Understanding State Constitutions* (Princeton: Princeton University Press, 1998), 101-109; Keyssar, *Right to Vote*, 32-33.

them.”²⁷ Democratic support for the declarative franchise was rooted in a desire to see Arkansas’s population expand (though for different reasons than Republicans). Democrats, led by Flanagin, worried that Arkansas would be forfeiting many future immigrants if restrictions were placed on the franchise. They saw other states that provided for a declarative franchise as their competition. Flanagin also addressed his fellow Democrats’ concerns over the declarative franchise and fraud arguing they should not apply to Arkansas. He readily admitted that election fraud had happened in other states, more specifically in their large cities, but pointed to Arkansas’s lack of such urban areas. Flanagin said multiple examples from the West could be found that demonstrated a lack of fraud associated with immigrant voting.²⁸

A second faction, limited strictly to Democrats, declared themselves opposed to any form of the declarative franchise. Here Arkansas Democrats were echoing national debates and concerns stretching back to the antebellum era and pronounced in the North about perceived dangers of immigrants voting too quickly. John Eakin of Hempstead County, a former Whig and editor, argued that the United States had gone far enough when it came to extending the franchise. “We should not be incautious of the element that comes among us. It is not much for us to ask of the foreigner that he remain here long enough to become identified with the country before he votes.”²⁹ This faction sought to require an immigrant to live in the state for at least five years before he would be eligible to vote. Simon Hughes of Monroe County pointed to the constitutions of Illinois, Ohio, and Pennsylvania to support this proposal, suggesting, inaccurately it turned out, that those states required immigrants to reside in the state for five

²⁷ “The Convention,” *Daily Arkansas Gazette*, August 4, 1874.

²⁸ “The Convention,” *Daily Arkansas Gazette*, August 4, 1874.

²⁹ “The Convention,” *Daily Arkansas Gazette*, August 4, 1874.

years before they could vote.³⁰ Hughes argued that Arkansas needed a restrictive residency requirement to prevent fraud. Hughes was not the only delegate to push for a five-year residency requirement prior to voting. Rufus Garland of Nevada County suggested Arkansas should look to those states that had a five-year requirement to see how well they retained immigrants.

Jesse N. Cypert of White County, who had opposed black suffrage in 1868, offered a compromise position. He would provide the franchise to any immigrant living in the state at the time of the constitution's ratification. One assumes that future immigrants would have to be naturalized before obtaining franchise. He said, despite the fact that his home, White County, contained only forty-seven foreign born residents, that he understood the need to protect those immigrants who had already been granted the right to vote but he insisted on limiting future immigrants' franchise rights.³¹

Unfortunately, it is impossible to establish the numerical strength of each of the three factions that emerged concerning the declarative franchise. In this instance, too, the convention convened as a committee of the whole to consider the franchise article. From the *Daily Arkansas Gazette* it can be determined that the compromise motion put forward by Jesse N. Cypert failed,

³⁰ In fact, the Pennsylvania Constitution of 1874 stipulated that in order to vote an individual had to have resided in the state for at least one month, have resided in the state for one year (if the individual was native born in another state this limit was shortened to six months), and was required to have paid county or state tax within two year of voting. Furthermore, the referenced Illinois Constitution, that of 1870, required that a noncitizen have resided in the state for one year, in the County where they wished to vote for ninety days, and in their election district for no less than thirty days preceding the election for both citizens and noncitizens. When it came to the Ohio Constitution, once again the requirement was one year preceding the election. This was true of the failed proposed Ohio Constitution of 1874 as well. It is important to note that all of these states did not require formal citizenship prior to voting; Constitution of Pennsylvania, 1874, Article VIII; Constitution of Illinois, 1870, Article VII; Ohio Constitution, 1851, Article V; Proposed Ohio Constitution of 1874, 1874, Article V; "The Convention," *Daily Arkansas Gazette*, August 1, 1874; 1870 Census.

³¹"The Convention," *Daily Arkansas Gazette*, August 2, 1874.

only receiving five votes in favor. Unfortunately, no roll call is provided for this vote. The *Daily Arkansas Gazette* recorded that the proposal allowing a declarative franchise advanced by Mr. Williams of Jefferson passed but neither the paper nor the journal provided a roll call in this instance either. Yet, even if all Republicans supported the measure, it would have taken a large number of Democratic votes to pass it. Based on what little information is available it can be surmised that a faction of delegates--most likely all Democrats though we cannot know for sure that no Republicans supported this proposal--sought to implement a more severe franchise article that would have required foreign born residents to reside in the state for five years prior to being granted the right to vote. A five year residency requirement in effect would require citizenship since five years was the nationalization waiting period in this era. Instead, the majority, though it cannot be determined how large a majority, elected to allow foreign-born residents who declared their intention to become citizens the right to vote.³²

On August 8 the convention voted 79 to 6, with 6 delegates not voting, to approve the franchise article. While six Republican delegates voted against the final article, the Democrats in the convention uniformly supported the final product despite its failure to include a poll tax. This debate over the franchise article illustrates that the convention and eventual constitution could have been much more severe. The final product did not limit voting rights the way some members would have preferred and preserved the rights that African Americans had previously won.³³

A couple of reasons emerge for this. From a purely pragmatic standpoint, many Democrats remained wary of Congress and the Grant Administration. The last thing these

³² "Journal," 165; "The Convention," *Daily Arkansas Gazette*, August 4, 1874.

³³ "The Convention," *Daily Arkansas Gazette*, August 4, 1874.

Democrats wished to do was provide a rationale for the federal government to interject themselves back into the state's affairs. They feared that suffrage restrictions would possibly provide such a rationale. More importantly, most of the state's counties had large white and Democratic majorities. Most Democrats did not face any imminent threat of black political domination. They could not justify burdening their own safely Democratic constituencies with a poll tax. At this point, in contrast to the 1880s, poorer whites remained a reliable consistency for the party. While many Democrats objected to black suffrage on principle, the only means of restricting it might exclude poor and uneducated whites in areas where African Americans posed little immediate threat.

It is important to note here that African Americans continued to serve in the Arkansas legislature until disfranchisement in the 1890s. As Thomas DeBlack explains African Americans did not see an "immediate deterioration" of their rights after Arkansas Democrats regained power. Governor William Miller actively sought black votes while running to succeed Augustus Garland. Story Matkin-Rawn has shown that the number of black Arkansans increased during this era due to black immigration, raising the African American proportion of a number of counties' populations. Eighty-four African American legislators served in the general assembly between 1868 and 1893 and a majority of these held office after 1874. Twelve African Americans served in the Arkansas House during the 1891 session, the last in which blacks served.³⁴ An untold number, due to the lack of research in the area, of black Arkansans served in local offices such as county judge and sheriff.

³⁴ 1870 Census; Moneyhon, *Arkansas and the New South, 1874-1929*, 16-17; DeBlack, *With Fire and Sword*, 226-229; Black Wintory, "African American Legislators in the Arkansas General Assembly, 1869-1893," *Arkansas Historical Quarterly* 65 (2006): 386-392; Matkin-

Democrats opted for disfranchisement only after threats multiplied both at the local and state level in the 1880s. This was prompted by a growing black population in a number of counties but also the fact that whites were becoming less reliably Democratic with the “Agrarian Revolt.”³⁵

Constitution-makers in Arkansas were partaking of the same trends evident in other constitutions of the era. Most southern states, like Arkansas, waited until the 1890s to impose poll taxes and other restrictive mechanisms. Redeemers elsewhere feared federal intervention if they moved to quickly to disfranchise voters in their states since the Fifteenth Amendment and Enforcement Acts had made the federal government responsible for protecting voting rights. States delayed disfranchisement until such time that they thought, or at least hoped, that the federal government would not take action against them. By the late 1880s or early 1890s Democrats elsewhere also faced a third party threat with whites, especially poor whites, becoming less reliably Democratic.³⁶

Outside of the South, other states allowed immigrants to vote after a prescribed time of residency. In Missouri, to Arkansas’s north, as well as in Illinois, and West Virginia, constitution-makers provided for immigrants who had lived in the state for more than one year

Rawn, “The Great Negro State of the Country,” 3-4; Arkansas Constitution of 1874, Article XIX, Sec. 21.

³⁵ Graves, *Town and Country*, 48-49, 109; Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001), 19-20, 59-69; Matkin-Rawn, “The Great Negro State of the Country,” 31-37, 39-41; Chris M. Branam, “Another Look at Disfranchisement in Arkansas, 1888-1894,” *Arkansas Historic Quarterly* 69 (2010): 248-250, 252-253; J. Morgan Kousser, *The Shaping of Southern Politics*, 123-30

³⁶ Alabama Constitution of 1875, Article VIII; Texas Constitution of 1876, Article VI; Georgia Constitution of 1877, Article II; Florida Constitution of 1885, Article VI. Kousser, *The Shaping of Southern Politics*, 251-253; Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina, 2001), 16.

but less than five years to declare their intention to become a citizen and vote. Voters were required to live in the state for at least one year and in the district for a minimum of sixty days. When it came to this issue of suffrage and the franchise, constitution-makers in both the South and the nation as a whole partook of some of the same impulses.³⁷

³⁷ Illinois Constitution of 1870, Article VII; Missouri Constitution of 1875, Article VIII; West Virginia Constitution of 1872, Article IV.

Chapter 7

Railroads, Immigration, and Economic Development

Besides defining the powers of government and the rights of citizens, Redeemer constitution-makers also had to consider what the state would do to promote its own growth. Arkansas emerged from the Civil War with next to nothing in terms of railroads (universally seen in that era as key to economic growth) and a labor shortage. Republicans had addressed these issues with expensive programs to promote railroad construction and immigration and had been loudly attacked by Democrats for the debt and corruption that attended these efforts. Nevertheless, the party's commitment to retrenchment and tax relief coexisted uncomfortably with the widespread perception among Democrats (and not simply Republicans) that Arkansas needed more railroads, industry, and labor. Many assumed public support was necessary to promote such things. Railroads, for instance, could not hope to earn a healthy return until well after construction. This chapter will examine Democrats' debates over tax exemptions for manufacturing and mining, internal improvement aid for railroads, and efforts to attract immigration to address the states labor concerns and how they shaped the 1874 constitution.¹

Railroads had long been seen by many as crucial to Arkansas's development. Beginning in 1844 the state chartered multiple railroad companies, though very few built their projected lines. But Democrats had long been divided when it came to the issue of internal improvement.

¹Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Baton Rouge: Louisiana State University Press, 1994), 13; Michael Perman, *The Road to Redemption: Southern Politics, 1869-1879* (Chapel Hill: University of North Carolina Press, 1984), 67-76.

In the 1852 gubernatorial election, for instance even the state's dominant faction, as Michael Dougan notes, did not present a unified front. Elias Conway, the Family candidate for governor, vied for the anti-development vote by saying that he favored "good dirt roads." These anti-development forces were primarily concerned with the expense of such improvements to the state given the large debt and how imperative it was to keep taxes low. Family Democrats who favored state-subsidized internal improvements prevailed, at least in the general assembly, while Conway was elected governor. In 1853 the general assembly incorporated the Cairo and Fulton Railroad and granted the line 640 acres of public land per mile constructed. According to Carl Moneyhon, railroad subsidies netted the state just over sixty mile of railroad track prior to the war, and none of the Cairo and Fulton was built before the war. What railroad development had occurred would end during the Civil War.

Following the war railroads, or rather aid to railroads, would become one of the dominant issues in Arkansas politics. The conservative legislature's override of Governor Isaac Murphy's 1867 veto of a proposal to loan the state's credit to build railroads indicates that considerable Democratic support existed for public investment in railroad development. This general assembly also incorporated five railroad companies. Democratic support of railroad investment and development continued until the end of Presidential Reconstruction.²

² Mark W. Summers, *Railroads, Reconstruction, and the Gospel of Prosperity: Aid under the Radical Republicans, 1865-1877* (Princeton: Princeton University Press, 1984), 36; Michael B. Dougan, *Confederate Arkansas: The People and Policies of a Frontier State in War Time* (Tuscaloosa: University of Alabama Press, 1976), 7-10; Thomas DeBlack, *With Fire and Sword. 1861-1874* (Fayetteville: University of Arkansas Press, 2002), 13-14; Donald P. McNeilly, *The Old South Frontier: Cotton Plantations and the Formation of Arkansas Society, 1819-1861* (Fayetteville: University of Arkansas Press, 2002), 166-168; Cal Ledbetter Jr., "The Constitution of 1836: A New Perspective," *Arkansas Historical Quarterly* 41 (1982): 243.

Many Democrat-Conservatives also embraced other sorts of state action to attract industry and economic development to the state. In an effort to promote textile industries, the general assembly in 1866 also approved a bill exempting manufacturers from state and local taxes if they produced goods from cotton or wool.³

Arkansas under Radical Republican rule would further embrace internal improvements and state aid would finally pay dividends. Mark Summers writes of Southern Republicans:

Railroad aid suited Republican purposes not simply because it was practical and essential, but because it was thoroughly conservative. Nothing fitted Southern tradition so well, or had less of the taint of intrusive Northern radicalism. So clear had it been to the antebellum South that roads could not be built with private means alone that such an alternative was hardly considered...⁴

Cal Ledbetter says the 1868 Constitution, “unlike Arkansas constitutions before or since, put state government in a central role not only to assist business (railroads) and promote internal improvements.” Carl Moneyhon argues that, “Economic development was a central part of the agenda of the state’s Republican Party in the years between 1867 and 1874. But notes Republicans concentrated their attention on railroad building and levee construction at the expense of the promotion of manufacturing and mining in the state.⁵

The Republican dominated legislatures after 1868 advanced plans whereby the state would offer bonds at a rate of ten thousand dollars per mile of track laid to companies that had

³ Paige E. Mulhollan, “Arkansas General Assembly of 1866 and Its Effects on Reconstruction,” *Arkansas Historical Quarterly* 2 (1961): 335-337; Jerry E. Hinshaw, *Call the Roll: The First One Hundred Years of the Arkansas Legislature* (Little Rock: Rose Publishing, 1986), 47; Stephen E. Wood, “The Development of Arkansas Railroads, Part I” *Arkansas Historical Quarterly* 7 (1948): 126.

⁴ Summers, *Railroads, Reconstruction, and the Gospel of Prosperity*, 36.

⁵ DeBlack, *With Fire and Sword*, 207-211; Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas*, 203-204: See also, Summers, *Railroads, Reconstruction, and the Gospel of Prosperity*, 36-37.

received federal land grants. They would grant fifteen thousand dollars in state bonds per mile for those companies that had not gotten federal aid. Under the 1868 Constitution state aid to railroads and other businesses required a vote of the people. The voters of Arkansas overwhelmingly voted in favor of providing such aid to railroad companies. This generous funding program helped create a situation where multiple railroad companies sought the money. Before all was said and done eighty-six companies were chartered and the state approved more than nine million dollars in railroad bonds to build these roads.⁶ An additional \$1,876,773 was issued to fund levees along navigable streams. Often these railroads were slow to complete their work or in some cases stopped work for long periods of time, which led to political tension in the state. In 1871 the general assembly passed an act requiring any railroad that took state aid to complete one-fourth of the line within a set amount of time. Despite this tension, the general assembly approved the Levee Act in 1871 giving railroads up to \$15,000 per mile to build lines in swampy areas. Wood says that the legislature failed to make the new levee act supersede the act that had allowing some railroad companies to continue to collect aid under both laws. But railroads were built under these programs. From 1868 to 1874 six hundred and sixty-two miles of track were added connecting the state to eastern cities.⁷

Initially many Democrats supported much of the Republican railroad program. Over time, this support gave way to criticism and opposition. Clayton, sought to withhold railroad aid funds until the general assembly funded the state's debt, something Democrats opposed. Once the debt was funded and the Clayton regime began granting aid to railroad companies, Democrats were quick to find fault, claiming that Clayton showed favoritism to railroad

⁶ DeBlack, *With Fire and Sword*, 209-211.

⁷ Stephen E. Wood, "The Development of Arkansas Railroads, Part I," *Arkansas Historical Quarterly* 7 (1948): 126-128.

companies chartered by Republicans and political cronies. Furthermore, Democrats charged that the only way railroad companies could expect to obtain state aid was by bribing state officials. On October 31, 1868 the *Gazette* claimed that a “little ring of radical speculators at Little Rock had laid plans to get into their own hands all the bonds of the state for the entire length of roads which the law authorized.”⁸

The railroad program became a centerpiece of Democrats’ attacks on Republican extravagance and corruption and not without reason. According to Democrats, the Republican controlled board of commissioners gave their carpetbagger friends preferential treatment by giving them bonds. The Democratic press bemoaned the fact that the railroad program had been politicized, which was ironic since they would make such good use of the issue in their efforts to undermine Republicans. On April 27, 1870 the *Gazette* said that Republicans making railroad aid a political issue would lead to their efforts failing. On March 11, 1871 the *Gazette* denounced the Republican railroad aid plan, saying that it further endangered the state’s credit.

These bonds were thrown on the New York market, as much realized from them as could be obtained, some little work done, and the enterprises brought to a standstill. This is true particularly of the Little Rock, Pine Bluff, and New Orleans, and the Mississippi, Ouachita, and Red River Railroads. Just exactly how the affairs of these two corporations now stand are not advised.⁹

Democrats sought to use any hint of corruption or favoritism for political gain. The Democratic press charged that despite state aid little had been accomplished.

That the state aid had not built one mile of railroad is true. What road has been built since the ratification of the act by the people granting the aid, is due to private enterprise alone. The state aid has been a drawback—an incubus. Without it we would find two miles of road today where we now find one.¹⁰

⁸ “Rebels Opposing Railroads,” *Daily Arkansas Gazette*, October 31, 1868.

⁹ “Our Railroads—State Aid,” *Arkansas Daily Gazette*, August 27, 1871.

¹⁰ “State Aid to Railroads,” *Daily Arkansas Gazette*, August 29, 1871.

Furthermore, Democrats were outraged by the fact that many Republican officials including Governor Clayton and U.S. Senator Stephen F. Dorsey were investors in railroad companies.

Corruption was not the only issue that provided Democrats with ammunition against the Radical Republican railroad plan. The bonds issued for the financing of these rail lines were not selling at face value, meaning that they were not producing the revenue needed to finance the railroads while greatly expanding the state debt. Democrats were quick to attack based on this issue. Democrats had begun Reconstruction eager for economic development but after the rise of Radical Reconstruction the party increasingly moved to attack Clayton and the Republican legislature using the railroad aid program and highlighting the corruption and mismanagement associated with state funds. Increasingly the Democratic message was one of retrenchment and tax relief that left little room for a Democratic commitment to aid when it came to internal improvements.¹¹

In 1874, constitution-makers took care to make sure that a railroad-subsidizing plan like the one implemented by Radical Republicans could not be repeated in the future. In Article XVI, Section 1 stipulated “Neither the State, nor any city, county, town, or other municipality in this state shall ever loan its credit for any purpose whatever.” Constitution-makers barred the state from providing direct financial support to any economic activity. It is worth noting that there is no discussion of this in the convention journal or the press. This provision came from the committee in this form and was adopted without amendment. The prohibition forced, for

¹¹ “Chamber of Commerce,” *Daily Arkansas Gazette*, November 5, 1871; Summers, *Railroads, Reconstruction, and the Gospel of Prosperity*, 251-252.; DeBlack, *With Fire and Sword*, 209-211; Orval Truman Driggs, Jr. “The Issues of the Powell Clayton Regime, 1868-1871,” *Arkansas Historical Quarterly* 8 (1949): 32-33; “Arkansas Railroads,” *Daily Arkansas Gazette*, April 27, 1870; “An Extravagant Measure,” *Daily Arkansas Gazette*, March 11, 1871.

instance, developers who wished to build a railroad to rely on private investors exclusively. It is worth noting that even subsidized railroads had to rely on investors.

If the convention ended direct railroad subsidy, it did, however, provide a means for future general assemblies to provide tax exemptions to spur industrial development. It was easier to square such promotion with the politics of retrenchment, as exemptions would less obviously expand the state's debt and not seem to spend taxpayers' money.¹²

Democrats and their main mouthpiece, the *Daily Arkansas Gazette*, were uncharacteristically nearly silent on the subject of tax exemptions for manufacturing and mining interests in the state in the weeks prior to the convention. However, two letters appeared in the pages of the *Gazette* leading up to the debate over the article. Signed "Arkansas" these letters favored tax exemptions for manufacturing and mining. The correspondent offered multiple examples of southern states that had expanded manufacturing. "Arkansas" cited Georgia, Missouri, Tennessee, and Alabama as examples of success with such tax exemption. He continued, "We need money—we need enterprise, and we need population, which will all come to us of necessity, when we offer adequate inducements."¹³

On July 31, the committee on Agricultural, Manufacturing, and Mining presented their proposed article to the convention. This proposal charged the general assembly with creating laws that would foster and aid agricultural, mining, and manufacturing enterprises in the state. The legislature was to create a bureau of agricultural, mining, and manufacturing to be headed by a state geologist. Lastly, all capital invested in the production of cotton products, woolen products, leaf tobacco, the production of mining and agricultural machinery, furniture

¹² Arkansas Constitution of 1874, Article XVI, Section 1.

¹³ "The Exemption Bill," *Daily Arkansas Gazette*, August 14, 1874.

production, leather tanning, and blast furnaces was to be exempt from state and local taxes for a period of seven years from the day the new constitution was adopted. Based on the types of manufacturing listed, the committee was attempting to appeal to the very industries that were propelling the economy in states such as Georgia and North Carolina.¹⁴

However, exempting manufacturing and mining from taxation divided Democrats and elicited calls to exempt agricultural interests as well. Simon Hughes supported exemptions and sought to expand the proposed exemption to a period of ten years, rather than seven. He argued, “We all know the condition of Arkansas—that financially she is driven to a desperate condition....Let us induce capital to come here and engage in that branch of industry.”¹⁵ Hughes urged his fellow constitution-makers to look no further than Arkansas’s neighbor to the north, Missouri, for a model. He argued that Missouri had offered tax exemptions and had garnered significant capital investment as a result. William Leiper joined Hughes and said that providing a tax exemption for manufacturing was simply encouraging growth, much like a farmer feeding his cattle. Former Governor Rector agreed and supported tax exemptions, as did William Fishback.

But Joseph House of White County sought to strike exemptions from the article. He argued that capital and labor should be on the same footing rather than labor being taxed and capital exempted. Furthermore, he denied that tax exemptions would encourage manufacturing in any way. Jesse Cypert, also of White, agreed.

When you talk about building up manufacturing by paying a bonus it is absurdity. This idea of exempting any certain class from taxation is unjust. Let credit come here and be governed by legitimate laws of business. It is absurd that you will exempt manufacturers and not the agriculturist.¹⁶

¹⁴ “The Convention,” *Daily Arkansas Gazette*, August 1, 1874.

¹⁵ “The Convention,” *Daily Arkansas Gazette*, July 27, 1874.

¹⁶ “The Convention,” *Daily Arkansas Gazette*, July 27, 1874.

Cypert and House were joined in their opposition by former governor Harris Flanagin. Flanagin (who opposed efforts to place limitations on taxation) went as far as to argue that tax exemptions in Georgia and Mississippi had played no role in their economic success, though he did not identify what had instead propelled that success. Mr. House of White County moved to strike the section granting a seven-year tax exemption. This motion was defeated 31 to 43. Of the thirty-one Democrats who voted to strike twenty-three possessed no prior political experience while just eight had held elective office prior to the convention but they include Flanagin and Cypert. . The largest number of these delegates, fifteen, were farmers (there were thirty farmers in the Democratic delegations). Six of these farmers were Grangers. Eleven were lawyers, and there were one each when it came to doctors, ministers, and merchants.¹⁷

Democratic divisions remained. R. P. Pulliam, who had opposed the effort by House to strike section 3, offered an amendment whereby the general assembly could, if it saw fit, exempt manufacturing and mining interests for up to seven years. This amendment passed with no debate though thirty-two delegates voted in the negative. These included a mix of those who opposed exemptions altogether and those who apparently did not want exemptions left to the discretion of the legislature. An analysis of this vote shows that Republicans opposed giving the legislature this power (Republicans knew they would be in the minority in the upcoming general assembly.)¹⁸

Delegates also sparred over the section requiring the general assembly to create a bureau of agriculture, manufacturing, and mining. William Hanna, Rufus Garland, Dawson Killgore, and John Eakin all opposed this requirement. They sought a change in the language to say that

¹⁷ "Journal," 498-500; "The Convention," *Daily Arkansas Gazette*, August 26, 1874.

¹⁸ "Journal," 501-502; "The Convention," *Daily Arkansas Gazette*, August 26, 1874.

the general assembly “may” create, not “shall” create, such a bureau. Here these Democrats sought to limit the requirements placed in the constitution. Eakin argued that it was the people’s general assembly and that the people should be able to decide when such a bureau would be established. Benjamin Walker, of Washington County, however, wished to stick with the more imperative “shall.” Walker argued that leaving such an important matter to legislative discretion would amplify the general assembly’s power—something to which he was opposed. William Leiper, who had opposed all efforts in the convention to raise revenue that would be used to pay the state’s “unjust” debts, said, “we would be derelict in our duty if we failed to provide for a bureau of this kind.”¹⁹ He went on to outline his reasoning for supporting such a bureau. He wanted the state to have more manufacturing to expand the tax base. Furthermore, he wanted the bureau to gather statistics on natural resources since he believed that no state in the southwest was richer in resources than Arkansas. William Fishback said his county, Sebastian, had millions of dollars in minerals that had not been tapped. But the motion by Mr. Hanna to change the wording to “may create” passed on a voice vote.

The appointment of a state geologist by the governor to lead the bureau stirred significant debate among Democratic constitution-makers. First, some Democrats, true to the party’s principle of decentralization, were opposed to the governor being given the power to appoint this position. William Leiper, while supporting the creation of the bureau, did not want the governor appointing the state geologist. He sought to strike out the portion giving the governor such power and insert “by election of the general assembly.” Fellow Democrat Benjamin Johnson of Calhoun County agreed; he did not want the governor’s appointment powers to be expanded. This amendment was defeated in a voice vote. John Eakin sought to amend by having the

¹⁹ “The Convention,” *Daily Arkansas Gazette*, August 26, 1874.

governor appoint the geologist with the advice of the Senate. Not all Democrats agreed on the proposal. George Doswell argued that a man who fit the qualifications of state geologist was going to be hard to find—therefore the general assembly should not be involved. He did not want to politicize the selection process. Other Democrats wished to have the people elect the state geologist. Joseph House of White County thought that the people should have a voice in all offices in the state. Republican J. Pennoyer Jones of Desha agreed with Mr. House. Former Governor Henry Rector favored the election of officers but argued that the state geologist called for a level of training and education that made appointment appropriate. The amendment offered by Mr. Eakin was adopted on a voice vote, but the debate was far from over. Dawson Killgore moved to strike the second section. According to Killgore the bureau did not have to be led by a geologist. His motion to this effect failed.²⁰

The roll was ordered and the proposal was defeated 20 to 52 with 18 delegates abstaining or absent. Of the fifteen Democrats who supported the motion ten were farmers, two were lawyers, two were doctors, and one was a minister. Farmers disproportionately appear to have supported eliminating the state geologist. Of these Democrats, only two possessed some level of political experience prior to the convention.²¹

Another aspect of the state's development that delegates had to consider was promoting population growth. Arkansas's population had grown enormously in the antebellum decades but the state suffered from a shortage of labor if not a shortage of settlers. With the end of slavery, Arkansas's agricultural interests had to find new ways to obtain the labor required to farm much of the state. Just two months after the war ended in Arkansas state leaders "took and active role

²⁰ "Journal," 496-498; "The Convention," *Daily Arkansas Gazette*, July 31, 1874.

²¹ "Journal," 496-498; "The Convention," *Daily Arkansas Gazette*, July 31, 1874.

in the attempt to attract immigrants to the state.”²² Arkansans sought to emphasize the state’s peaceful condition, resources, and cheap land. In 1865 Arkansas officials founded the Arkansas Immigrant Aid Society to promote immigration to the state and published a pamphlet, *Arkansas! The Home for Immigrants!*, to advertise all the state had to offer. The president of the society was Arkansas Secretary of State Robert J. T. White and Governor Murphy served as one of the vice presidents of the organization. The remaining officers were also state officeholders.

Arkansans supported immigration for varying reasons: planters sought more labor and Republicans sought to increase the numbers of African Americans but also Yankee and European immigrants who were less reflexively Democrat than southern-born whites. While this project did not produce the desired results and lasted only a short time, it demonstrated the state’s willingness and desire to attract immigrants. Private groups formed and published their own pamphlets as well, such as one published by the German Immigration Aid Society. Governor Isaac Murphy encouraged the general assembly to pass laws encouraging immigration. The house passed such a bill to only see it die in the state senate. Much of this focus was on recruiting labor to work Arkansas’s fields, but this encouraged immigration all the same. Later the general assembly passed an immigration aid bill, but nothing came of it due to the passage of the Reconstruction Acts. Under Republican rule, the state would expand its efforts to encourage immigration and would see a substantial number of immigrants, many of them from Germany and Switzerland, settle in Arkansas. The general assembly created a state bureau of immigration to encourage both immigration and capital investment in the state.²³

²² Robert B. Walz, “Migration into Arkansas, 1820-1880: Incentives and Means of Travel” *Arkansas Historical Quarterly* 17 (1958): 309-313.

²³ Beverly Watkins, “Efforts to Encourage Immigration to Arkansas, 1865-1874” *Arkansas Historical Quarterly* 38 (1979): 33-35, 39-44, 50-53, 61; Story Matkin-Rawn, “The

Constitution-makers in the 1874 Constitutional Convention would have to decide first how much emphasis they wished to place on immigration. Secondly, if they wished to encourage immigration they would have to decide what role the state government would play. Democrats were divided when it came to the office of commissioner of immigration and state lands. Some like W. D. Leiper of Dallas County argued that the state needed such a department. Others like William Fishback of Sebastian County argued that previous commissioners of immigration and state lands had mismanaged the office. Most Democrats seemed to place little importance to the portion of the job associated with immigration. Dan O’Sullivan, a Republican member from Pulaski County, offered an amendment that would have created such an office much like the one found in the 1868 Constitution. According to O’Sullivan, the question of promoting immigration was too important to be left out of the constitution. This proposal, while reflecting long-held Republican goals, should have also appealed to many Democrats who wanted to promote immigration as well. However, Henry Bunn of Ouachita opposed the motion offered by O’Sullivan to make the commissioner of state lands the immigration officer once again. The most ardent opponent of this plan, though, was former governor Henry Rector. Rector’s position when it came to immigration was hard to ascertain. He ultimately accepted a compromise whereby the legislature could create the office of commissioner of state lands if they saw a need later. He would not accept the attaching of other duties such as that of commissioner of immigration. Rector did not speak in opposition to efforts designed to promote immigration but was adamant that the commissioner of state lands not be tasked with the job of promoting immigration to the state. With little debate, O’Sullivan’s motion was defeated 54 to 37. The

Great Negro State of the Country: Arkansas’s Reconstruction and the Other Great Migration” *Arkansas Historical Quarterly* 72 (2013): “3-4.

breakdown of this vote is unavailable as it was neither recorded in the official journal nor reported in the *Daily Arkansas Gazette*.

Constitution-makers ultimately did not address immigration, or more importantly, formalize state efforts to attract immigrants to the state. If the planter elite were the dominant force in the convention, as Carl Moneyhon has implied, measures designed to promote immigration would likely have served their obsession with expanding their labor force rather than having to continue to pay wages higher than elsewhere in the South. As Story Matkin-Rawn notes, they proved willing to see Arkansas's black population expand to serve their needs. The fact that the Democrats at the convention did not push harder for a state agency to promote immigration calls into question the strength of the landed elite (or New South commercial interest) in the convention. Interestingly enough, the first legislature after the constitution was ratified did create an immigration bureau.²⁴

Other constitution-makers of the era appear to have been cautious when it came to efforts to attract immigrants. Of the southern states examined, only Alabama and Florida, provided in their constitutions for an immigration officer to promote their state to new immigrants. Texas ended an existing Immigration Bureau and in fact, barred the use of state money to promote immigration. Constitution-makers in Georgia and Louisiana, as in Texas did not provide for state led efforts to promote immigration.²⁵

²⁴ DeBlack, *With Fire and Sword*, 207-112; Moneyhon, "The Creators of New South in Arkansas: Industrial Boosterism, 1875-1885," *Arkansas Historical Quarterly* 55 (1996): 287-288; Moneyhon, *Arkansas and the New South, 1874-1929* (Fayetteville: University of Arkansas Press, 1997), 18-20; "The Convention," *Daily Arkansas Gazette*, July 31, 1874; "The Convention," *Daily Arkansas Gazette*, August 14, 1874; "Journal," 184-185, 319-340.; Story Matkin Rawn, "'The Great Negro State of the Country'" 9-11, 13, 15.

²⁵ Alabama Constitution of 1875; Florida Constitution of 1885; Georgia Constitution of 1877; Louisiana Constitution of 1879; Texas Constitution of 1876.

Democrats had to deal with questions not only of promoting economic growth but regulating its consequences. Increasingly people called on states to regulate railroads, especially freight rates and warehouse charges.²⁶ On August 20, Mr. Rector presented the report of the committee on Railroads, Canals, and Turnpikes. All railroads, canals, and turnpikes were to be public highways and common carriers and, thus, subject to public authority. Any railroad or canal that operated in the state was to maintain an office within the state and maintain such records that stockholders or creditors might wish to review. All individuals and property were to be transported over these railroads, canals, and turnpikes without discrimination when it came to rates. The committee also proposed restrictions on the merger of competing or parallel railroads, canals, and turnpikes.

No president, director, officer, agent, or employee of any railroad or canal company, shall be interested directly or indirectly in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers controlled or worked by such company.²⁷

Transportation companies were to be forbidden to discriminate in charges or in facilities between transportation companies. These companies were also barred from granting free passage or passes to anyone other than officers and employees—free transportation was a way railroads were understood to influence officeholders. Transportation companies were not to be allowed to take right of ways or other property without providing the owners with proper compensation. The legislature was also empowered to prevent excessive charges—in other words they were given some authority over rates. When it came to taxation, the general assembly was to be allowed to tax the gross profits of these transportation companies and, lastly, the directors of

²⁶ Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988), 474-75.

²⁷ "The Convention," *Daily Arkansas Gazette*, August 20, 1874.

these companies were to be required to make an annual report to the state auditor concerning their business.²⁸

On August 30 constitution-makers took up the article on Railroads, Canals, and Turnpikes. Divisions between Democrats were immediately evident. Jesse N. Cypert of White County and former Governor Henry Rector of Garland County, both men with previous political experience, voiced their opposition to such an article's inclusion in the constitution. Cypert said of the article, "it has good things in it": but he doubted it needed to be included as part of the constitution. Rector pointed to the fact that no previous constitution had contained such an article as his reason for opposing. Cypert sought to strike the entire article and send it to the committee on miscellaneous provisions so they could "mine" the worthwhile provisions from it, while former Governor Harris Flanagin and John Eakin (also an experienced officeholder) supported the inclusion of such an article. Cypert's motion failed in a floor vote 17 to 56. While the most vocal opponents to the article were men like Cypert and Rector, men who possessed lengthy political resumes, fourteen of the seventeen delegates who embraced this position did not possess prior political experience. It is also worth noting that of the seventeen, nine were lawyers, six were farmers, one was a doctor, and the profession of one delegate is unknown.²⁹

Corporate regulation was provided for in many state constitutions of the era. Michael Perman says that in many cases the limitations were not enacted, but that many constitutions still contained provisions that prohibited free passes, and asserted some authority over rates.

Constitution-makers in Arkansas hewed closely to the language that appeared in constitutions

²⁸ "The Convention," *Daily Arkansas Gazette*, August 20, 1874.

²⁹ Arkansas Constitution of 1874, Article XVI, Section 1; "Journal," 573-576; "The Constitution," *Daily Arkansas Gazette*, September 1, 1874.

that proceeded it. For instance, the Illinois Constitution of 1870, the West Virginia Constitution of 1872, and the Pennsylvania Constitution of 1874 all contain sections that require railroad corporations doing business in their states to maintain an office so stockholders and creditors could review their books, as well as require corporations to file annual reports with the state. Arkansas constitution-makers partook of other shared elements such as a prohibition of parallel lines or competing railroads from merging. In all of these states railroads were to be common carriers, meaning that these railroads would carry goods and the public without discrimination. Lastly, these states, along with Arkansas barred railroads from discriminating when it came to charges for freight and passengers. It took states like Arkansas some time, however, to create agencies to exercise the authority over railroads claimed in their constitutions.³⁰

The 1874 Constitution barred the sort of railroad subsidy programs under taken during Reconstruction, but also what the Democratic-Conservatives had envisioned in the 1866-1867 general assembly. Despite the barriers to direct subsidies of railroad construction and the failure to enshrine immigration promotion in the constitution, however both railroads and population boomed afterward. Some of the state's most important lines, including the Cotton Belt and the Frisco, were not built until after subsidies ended. By the end of the century the state boasted more than 2,000 miles of track. Furthermore, large numbers of people continued to move to the state, its population increasing from 484,421 in 1870 to 1,311,564 in 1900. The constitution did give the general assembly the power to pass some legislation to promote economic development though. For instance, it could exempt capital invested in mining and manufacturing of cotton, woolen, or yarn mills as well as factories that made agricultural implements, tanneries, among other facilities for up to seven years. Ironically, this most positive measure constitution-makers

³⁰ Eric Foner, *Reconstruction*, 474-475; Perman, *The Road to Redemption*, 201, 206-207.

took to promote economic development, tax exemptions, was not sufficient to develop a robust industrial economy in Arkansas. Instead, railroad connections allowed the state to develop a handful of extractive industries—timber, mining—that did not put a lot more money in Arkansans pockets than cotton monoculture. Moreover, Democratic restrictions in other fields such as taxation and education would prevent the state from adequately coping with the population growth that occurred after 1874.³¹

³¹ Moneyhon, *Arkansas and the New South*, 24-27; “The Convention,” *Daily Arkansas Gazette*, August 11, 1874.

Chapter 8

Education

If the actions of the convention seem to have done relatively little to shape the state's economic and population growth, its impact on public education seems to have been decisive. Public education was one of the biggest things state and local governments did in the nineteenth-century in terms of the amount of money spent and the number of citizens affected, and, as J. Morgan Kousser has shown, politics plainly shaped how resources were distributed. Public education became a flash point during the 1874 Arkansas Constitutional Convention. Education raised central issues for Democrats: their dislike of a centralized government, their commitment to retrenchment, and, in many cases, their racial prejudices. While many antebellum Arkansans had little interaction with government, the centralized education system of Reconstruction placed citizens in regular contact with the state through the payment of taxes and compulsory school attendance. Education marked one of the central areas where government had gained significant new power and scope during Reconstruction, and became the object of considerable spending, leading many Democrats to train their sights on the state's education system as a prime example of both an unwholesome centralization and fiscal "extravagance." However, this opposition became more fractured when actual decisions on funding and administering public schools had to be made. This showed yet another way that the Redeemers' convention was far from harmonious. The most conservative element pushed for total decentralization and sought to

impose harsh retrenchment measures on the state's emerging educational system while other Democrats insisted that this system not be totally dismantled.¹

Arkansas did not develop a state school system until Congressional Reconstruction. The state's first constitution in 1836 provided that:

It shall be the duty of the general assembly to provide by law for the improvement of such lands as are or hereafter may be granted by the United States to the state for the use of school, and to apply any funds which may be raised for such lands, or from any other source, to the accomplishment of the object for which they are or may be intended.²

In reality the state did little to foster education between achieving statehood and the Civil War, neither taxing for the benefit of schools nor compelling communities to establish them. Schools were to be maintained by using the sixteenth section of public land provided for by the federal government for education in each township.³

According to the 1840 census, Arkansas had only 113 schools. An act passed by the general assembly in 1843 attempted to create a statewide school system. A five-member county education commission was created with three members being elected and the county clerk and county judge serving as the remaining members. Under this system schools were to be supported by contributions and the sixteenth section endowment. No local or state taxes were levied for education. Jerry Hinshaw argues "These early pioneers considered education a luxury to be paid

¹ J. Morgan Kousser, "Progressivism—For Middle Class Whites Only: North Carolina Education, 1880-1910," *The Journal of Southern History* 46 (1980): 173; Michael Perman, *The Road to Redemption: Southern Politics, 1869-1879* (Chapel Hill: University of North Carolina Press, 1984), 196; Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge: The Belknap Press, 1977), 133-135; Robert Kelley, *The Transatlantic Persuasion: The Liberal-Democratic Mind in the Age of Gladstone* (New York: Alfred A. Knopf, 1960), 210.

² Arkansas Constitution of 1836, Article VII.

³ Section sixteen of every township was granted to the states and territories for public education by the Land Ordinance of May 20, 1785.

for by those who enjoyed it.”⁴ In theory only those students who were deemed indigent were educated free of charge, and the system was always underfunded. In 1849 the general assembly again attempted to address public education. Legislators provided for the disposition of the seminary and saline lands, placing the proceeds from these lands under the control of the local township. The legislature provided for a three-member elected school board at the county level along with the election of three trustees who were to control the education funds. Once again, no state or local taxes were levied for education and no statewide apparatus created to oversee local efforts. In reality, only \$250,000 was collected from the sale of land, clearly insufficient to provide for a system of public education. Two years later, in 1851, the legislature once again made changes to the state’s education system. They kept schools under the control of the local county court rather than the township. Each township where there were at least fifteen students was to elect a common school commissioner. This commissioner was to lease the sixteenth section and use the revenue to pay for the schools in their township. In 1853 the general assembly took control from the local townships and placed it in the hands of the Secretary of State who became the ex-officio Superintendent of State Education. He was to gather information and make reports on school statistics and on the school fund. Under this new system, each county was to elect a common school commissioner. Control of the township’s education funds was taken away from the county treasurer. However, still, the state did little to see that schools were actually established.⁵

⁴ Jerry E. Hinshaw, *Call the Roll: The First One Hundred Years of the Arkansas Legislature* (Little Rock: Rose Publishing Company, 1986), 29.

⁵ Stephen B. Weeks, *History of Public Schools in Arkansas* (Washington: Government Printing Office, 1912), 38.

The lack of a state commitment to education meant that on the eve of the Civil War only twenty-five percent or fewer of Arkansas's school age children attended public schools. Some confusion exists as to how these public schools were defined. The state saw a number of private academies emerge to fill the void, including in Batesville, Little Rock, Fayetteville, Fort Smith, Springhill, Cane Hill, and Tulip. In fact, the line between public and private schools is hard to determine at times. Rather than establish schools, public funds often were used to pay tuition for indigent students so they could attend private institutions.⁶

Efforts to advance education in the state prior to the Civil War failed due to pressure from local interests, in particular large landowners who ensured no tax money went to education and who had little interest in educating poorer whites. On the eve of the Civil War the state had 727 public schools that educated roughly 20,000 students. The average expenditure per student was \$6.27 and Carl Moneyhon notes only seventy-five cents of this came from public funds. These limited funds came not from tax revenue, but from land sales. The 1864 Constitution essentially recreated the education article from the 1836 Constitution and provided little in the way of an educational system supported by state funding or oversight.⁷

⁶ The Osage Academy in Benton County is one example of private academy where public funds could be used to pay for indigent students. According to the *Arkansas Gazette* on June 18, 1843 the school offered a variety of instruction and charged different rates of tuition depending on the curriculum. For example, reading, spelling, and writing cost \$8.00 for a twenty-week term while higher branches of mathematics and surveying cost \$12.00, and ancient languages cost \$20.00. The Saline Seminary advertised instruction in orthography, reading, writing, arithmetic, English grammar, natural philosophy, astronomy, history, bookkeeping, geometry, and trigonometry, all for \$7.50 per five-week session. Margaret Ross Papers, MC1587, Box 25, Folder 119, University of Arkansas Special Collections. According to *The Arkansan*, a Fayetteville newspaper the Fayetteville Female Institute offered a similar list of subjects and charged \$130 for the school year for boarders and charged day scholars up to \$12.00 per day of instruction. Stephen B. Weeks, *History of Public Schools in Arkansas*, 38

⁷Stephen B. Weeks, *History of Public Schools in Arkansas*, 29-30; Selma Ann Plowman Hobby, "The Little Rock Public Schools During Reconstruction, 1865-1874." U of A Thesis,

Radical Republicans made stunning changes when drafting the 1868 Reconstruction Constitution, creating the state's first centralized education system. Schools would be established that were to be free and maintained by tax revenue and were to be open to all citizens, both black and white, between the ages of five and twenty-one. Compulsory attendance was initially required though the state lacked any real enforcement power. To fund schools each male Arkansan over the age of twenty-one was to pay a per capita tax of one dollar. Funds were to be appropriated by distributing the money to the counties based on the number of children in each county between the ages of five and twenty-one. If the public school fund was found to be insufficient to keep schools open at least three months per year, the general assembly would be able to levy property taxes in order to pay for the system. Republicans defeated multiple attempts in the convention to segregate the state's schools. Delegates created the position of superintendent of public instruction to administer the new centralized system.⁸

1967, 15, 43, 36-37; Carl H. Moneyhon, *The Impact of the Civil War and Reconstruction on Arkansas: Persistence in the Midst of Ruin* (Fayetteville: University of Arkansas Press, 2002), 85-86; Moneyhon, *Arkansas and the New South*, 53; *Acts Passed At the Fourth Session of the General Assembly of the State of Arkansas* (Little Rock: Printed by Eli Colby, 1843), 128-129; *Acts Passed at the Seventh Session of the General Assembly of the State of Arkansas* (Little Rock: Printed at the Gazette Office, 1849) 87-88, 212-213; *Acts Passed at the Eighth Session of the General Assembly of the State of Arkansas* (Little Rock: Lambert A. Whiteley-State Printer, 1851), 114-122; *Acts Passed at the Ninth Session of the General Assembly of the State of Arkansas* (Arkadelphia: R. L. Pegues, State Printer, 1853), 143-157; Weeks, *History of Public School Education in Arkansas* 38.

⁸ *Acts of the General Assembly of the State of Arkansas*, "An act to establish and maintain a system of free common schools for the state of Arkansas," Approved 23 of July 1868, (Little Rock: John G. Price, 1868), <https://archive.org/details/acttoestablishma00arka>, (accessed 2/22/2017), 163-197; Constitution of 1868, Article IX; Hobby, 15,43,36-37, 47-48; Thomas DeBlack, *With Fire and Sword: Arkansas, 1861-1874* (Fayetteville: University of Arkansas Press, 2002), 169; John William Graves, *Town and Country: Race Relations in an Urban-Rural Context, Arkansas, 1865-1905* (Fayetteville: University of Arkansas Press, 1990), 30; Perman, *The Road to Redemption*, 31.

Following the adoption of the 1868 Constitution the general assembly passed “an Act to Establish and Maintain a system of free common schools for the state of Arkansas.” This act created a state board of commissioners of common school funds that consisted of the governor, the secretary of state, and the state superintendent of public instruction. This board was to manage and invest common school funds. The general assembly also adopted a statute segregating the state’s schools. Democrats had called on the legislature to pass a law ending any potential for “amalgamation” in the state’s education system. In actuality, there was little reason to worry. Michael Perman argues,

Radicals, both black and white, did not demand integration. Instead, they voted against all attempts to require that schools be segregated, thus leaving the outcome moot on the assumption that at least blacks had obtained access, which was in itself a gain.⁹

Under this system, each county was to be divided into school districts, but no district was allowed to cover territory from two counties. These counties were compelled to create school districts, unlike the antebellum era where communities could simply opt to not create schools. These districts were to hold annual school district meetings where qualified voters were to choose the site for their school, set the school term, and select a district trustee who would handle the business matters of the district for the preceding year. In addition to the per capita tax of one dollar that was to be paid by every male over the age of twenty-one, county courts could levy any further taxes to sustain the school. This centralized system was to be administered by a state superintendent of public institution who was to be elected for a four-year term, and ten circuit superintendents. These officials were to be appointed by the governor for a four-year term and paid a salary of \$3,000. This system was short lived due to criticism that the \$30,000 it took to pay these officials took far too much of the state’s education budget and charges that Clayton

⁹ Perman, *The Road to Redemption*, 31.

was using these offices to build a political machine.¹⁰ In 1871 the general assembly addressed the topic of public education once again. Under this act the state maintained the office of Superintendent of Public Instruction as a state office, provided for the education of both white and black students, did away with the circuit superintendents, enacted a general property tax of twenty cents on the dollar for education, continued the use of the per-capita tax, and allowed for the levying of local or special taxes. The local tax was limited to five mills on the dollar.¹¹

No sooner had the act to establish and maintain a system of free common schools for the state of Arkansas passed the legislature than Democrats attacked using the salaries paid to the assistant commissioners. Under the heading “The School Law,” in the *Daily Gazette* Republicans were charged with extravagance. Democrats wished to see the circuit or assistant commissioner positions done away with and cited the significant cost savings such a move would provide. In addition to centralization and race mixing, school finance proved to be a common source of Democratic attack. An article that appeared in the October 26, 1870 edition of the *Daily Arkansas Gazette* stated,

In the administration of no department of our state government has radical extravagance, profligacy and downright fraud and robbery, been more palpable and notoriously manifested, than in the management of the revenues of our common schools. In nothing has radicalism so much prided and valued itself in Arkansas, as in its boasted

¹⁰ *Acts of the General Assembly of the State of Arkansas*, “An act to establish and maintain a system of free common schools for the state of Arkansas,” Approved 23 of July 1868, (Little Rock: John G. Price, 1868), <https://archive.org/details/acttoestablishma00arka>, (accessed 2/22/2017), 163-197; Constitution of 1868, Article IX; Hobby, “The Little Rock Public Schools during Reconstruction” 15,43,36-37, 47-48; DeBlack, 169; “General Assembly of Arkansas,” *Daily Arkansas Gazette*, March 10, 1871.

¹¹ *Acts, Resolutions, and Memorials of the General Assembly of the State of Arkansas*, “An Act to for the Better Regulation of Public Schools in Cities and Towns” (Little Rock: Price & Barton, Public Printers, 1869), 20-28; *Acts, Resolutions, and Memorials of the General Assembly of the State of Arkansas* (Little Rock: Price & Barton, Public Printer, 1871), 177-178; Weeks, *History of Public Schools in Arkansas* 57-58.

establishment of a system of public instruction for the education of the children of the poor, by means of free common schools.¹²

Radical Republicans were charged with diverting “vast sums” of school funds into the pockets of school officials. The unnamed author provided numbers to bolster his argument. He argued that when the Clayton administration took over the governor’s office there had been \$64,874 in the school fund. Based on new taxes and fees the total revenue raised for educational purposes should have totaled approximately \$1,989,875. He demanded to know where the money had gone and how it was spent. The author called this a “great radical swindle, disguised under the name of free schools.”¹³ The author insisted,

The conservative party, without exception, are in favor of good, practical, efficient and prudently managed system of public education; but as for this tub mill of radical robbery, theft and speculation—miscalled common school system, now in vogue in radical circles—we, of course, have no respect and no patience with those who have.¹⁴

Democratic denunciations of high taxation along with calls for retrenchment set the stage for a battle concerning education funding in the press in advance of the convention. The most substantial treatment came on July 15, 1874 from Charles Goldberg, who called himself a professional educator. Goldberg offered a list of suggestions concerning education as it related to the new constitution. He charged the Reconstruction legislature with creating school offices, circuit superintendents for example, to reward political supporters. Furthermore, he accused the legislature of mismanaging the state’s school fund. He argued that any new system would have to embrace “economy” As part of this Goldberg called on constitution-makers to provide for one superintendent of public instruction, to prevent the legislature from mismanaging the school fund, and to use the sixteenth section of every township for education in that township. He also

¹² “Our Common School System,” *Daily Arkansas Gazette*, October 26, 1870.

¹³ “Our Common School System,” *Daily Arkansas Gazette*, October 26, 1870.

¹⁴ “Our Common School System,” *Daily Arkansas Gazette*, October 26, 1870.

called for a poll tax.¹⁵ It is important to note here that the per-capita tax was not only more regressive than a property tax but hard to collect. Many people avoided paying the tax, and proof of payment was not to have been required for voting. On July 15 a letter to the editor appeared signed “Palmetto.” It briefly addressed the free school law saying, “We want the best system that can be devised on that point.”¹⁶ But he wished to limit excessive taxation, and curtail the high salaries and “superfluous” offices.¹⁷

While Democrats seemed, then, to have committed themselves to shrinking the state’s role in education both in funding and administration, the constitution of 1874 did not go as far as some party members wanted in uprooting the state’s education system. The system created by Republicans had seen some degree of success. The majority of delegates to the 1874 convention were not prepared to dismiss the improvements in education entirely or to totally dismantle the state’s education system—no matter what their rhetoric suggested.¹⁸

Still, when it came to both funding and administration Arkansas delegates were sharply divided. On August 1 the committee on education presented its majority report to the convention. The proposed article charged the general assembly with providing a “practical and efficient” common school system. This system was to be available to all children of the state over the age of six and under the age of twenty-one. In order to pay for this system, the proposed article stipulated that all lands given to the state by the federal government for school purposes should be sold and the proceeds of the sale of any public lands of the United States be used for the maintenance of common schools. Furthermore, any proceeds from fines, penalties, or forfeitures

¹⁵ “Education,” *Daily Arkansas Gazette*, June 26, 1874.

¹⁶ “Convention Notes,” *Daily Arkansas Gazette*, July 15, 1874.

¹⁷ “Convention Notes,” *Daily Arkansas Gazette*, July 15, 1874.

¹⁸ DeBlack, *With Fire and Sword*, 205.

would be assigned to the school fund along with a one-dollar per capita tax that would be payable by every male inhabitant over the age of twenty-one in each county. Significantly, the article allowed the general assembly and individual school districts to levy additional taxes, though local school taxes had to be approved by the voters of the school district and any school tax was not to exceed five mills on the dollar on taxable property. This report was tabled until August 21. At that point, a minority report was presented to the convention. The minority report called for a “suitable and efficient system of free schools,” but expressly limited the general assembly’s ability to levy a tax of more than two mills in any one year. The minority, like the majority, called for a per capita tax of one dollar. Where the majority report had proposed making the judge of the county court the ex-officio county superintendent of common schools, the minority placed this supervisory power in the hands of the biannual legislature, implying there would be little active oversight of education in the state.¹⁹

Some Democrats wished the state to play a larger role in administration, funding, or both. Democrat John Horner of Phillips County said that he wanted to make sure the general assembly would be required to establish a system of “good” common schools and not leave it up to local communities to establish and maintain their schools. Horner’s concern may have come from a couple of sources. He hailed from the delta and, like many white Democrats from his region, he worried about attracting farm labor after the demise of slavery. He argued that a solid school system would induce white immigrants to move to the state. Furthermore, Horner’s county, Phillips, was 68% African American and the only way that he had been elected was through a fusion agreement with the county’s black Republicans. So he may have also been responding to

¹⁹ “Journal,” 192-193, 423; “The Convention,” *Daily Arkansas Gazette*, August 2, 1874; “The Convention,” *Daily Arkansas Gazette*, August 21, 1874.

African Americans' interest in education and their concerns surrounding local whites' commitment to schooling the black majority. Jesse Cypert worried that if education were left to local communities or counties some would not be able to raise significant revenue to pay for a school system. This, according to Cypert, would force many children into private schools or simply mean those students would not get any education at all. Cypert saw state taxation for schools as the only workable solution to this funding disparity. J.G. Frierson of Cross County argued that the system envisioned within the minority report would create a "system left to education's two enemies 'ignorance and wealth.'" Frierson said.

He would make the property educate the children of the state. We should not leave it to the people to vote a tax on themselves, because in many places they will not do it, and the children will go uneducated. The minority report in effect panders to private schools and the property of the state.²⁰

Here Frierson endorsed state taxation, like Cypert representing the most generous end of the Democratic spectrum. William M. Fishback of Sebastian County agreed with Cypert and Frierson. He supported the idea of a statewide tax for education in the form of a property tax and feared that, without such a funding mechanism, many of Arkansas's children would simply not have significant educational opportunities. It is not clear, however, if these Democrats such as Fishback, Cypert, and Frierson were calling for more of a tax than the two mills offered by the minority. While some Democrat delegates argued that such a tax system would be ripe for mismanagement and pointed to past incidents of mismanagement, Fishback said, "just because the school fund was to be centrally collected did not mean it would be mismanaged."²¹ These Democrats joined Republican delegates like John Williams of Jefferson County and William L. Copeland, a black Republican from Crittenden County, in support of a statewide property tax to

²⁰ "The Convention," *Daily Arkansas Gazette*, August 21, 1874; "Journal," 420-44.

²¹ "The Convention," *Daily Arkansas Gazette*, August 21, 1874

fund education. Copeland said he wanted to make sure that the poor and working class of the state had an opportunity to get an education. He said “In eastern Arkansas the laboring classes will never cast a vote for a constitution that does not provide for the education of their children.”²² Copeland, like Horner, represented a Delta county. Copeland’s constituents were eager to make sure that their children had educational opportunities. Men like Horner, a Democrat, and Copeland, a Republican, saw the creation of an educational system as being critical when it came to attracting immigrants and keeping them and providing a better way of life for Arkansas’s children. “We have a class in the state who will leave it unless there is established a good free school system. Immigrants never go to a state where their children cannot be educated.”²³

However, some Democrats thought even the minority report went too far when it came to funding and administration. Former governor Henry Rector of Garland County disagreed with Horner’s argument and said, “If the question of general free schools was submitted to the people of Garland County today, they would vote it down by almost a unanimous vote. If they are to have schools, they want them under their own control.”²⁴ Rector’s county, located in the south central portion of the state, did not face the same labor issues as Horner’s. Rector was attuned to the feelings of his constituents and argued that while he supported common schools, he could not support either report due to the prevailing attitude in his district.²⁵

Ransom Gulley of Izard County opposed the majority report and the minority because he saw the provision that would allow the general assembly to levy a tax for educational

²² “The Convention,” *Daily Arkansas Gazette*, August 21, 1874

²³ “The Convention,” *Daily Arkansas Gazette*, August 21, 1874

²⁴ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

²⁵ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874..

purposes as a path to centralization. He argued that the state had no role to play when it came to education. He thought that the people should be in charge of local schools and he wanted to leave education to each county and town. When it came to funding schools he argued that each county should keep all money collected in the county. In other words, all educational funds would be raised locally, paid locally to the tax collector, and used in the county where they were collected. Gulley feared that any sort of centralized tax system for education would lead to abuse just as in the past. “Mismanagement and misrule have prevailed to such an extent that our people cannot afford to pay for a general system—hence we leave it to the general assembly to provide for a practical system, leaving the matter to each school district.”²⁶

Some Democrats opposed the very notion of school taxes because they redistributed wealth. Future governor James Eagle said that some voters always stood ready to vote higher taxes on property owners and that it was not right to do so. “It is not in keeping with the genius of the government to permit nontax payers to appropriate the property of others for their own use.”²⁷ At least one Democrat, J. A. Gibson of Arkansas County, not only objected to statewide taxation for schools but also statewide use of land revenue to pay for the school system. “If there are poor counties in this state they have no right to take the property of other counties to apply it to their own use.”²⁸ Gibson seemed to believe that Arkansas County would have ample public land to fund an adequate system of education for a substantial period of time. He worried about the redistributive effect of a statewide application of revenue raised from land sales. He and his

²⁶ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

²⁷ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

²⁸ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

constituents saw a centralized system as a way to force them to supplement poorer regions of the state and they were unwilling to do so. He was opposed to a general education system saying,

It may be true a general system of schools would be a benefit to some counties, but it was not a benefit to those counties that had to furnish the funds. There is not a county or township in the state that would vote to give away its property for the use of others. We have heretofore paid into the state treasury a larger amount than we received in return.²⁹

Hugh French Thomason of Crawford County, a former Confederate Congressman and Know Nothing candidate for congress, opposed the centralized collection of taxes and the creation of a central endowment fund that would build up over time,

We all know the people are hard run, and yet the proposition here is, that they must be taxed to create an endowment fund for future generations. Let every generation take care of itself...Our children need education now. More money that has been raised by direct taxation has gone to fill pockets of school officials than teachers.³⁰

Here Thomason employed a Democratic tactic in use since 1868 to say that the Republican system of education had been mismanaged. Thomason brought immense political experience with him to the convention including a stint in the Confederate Congress where he had proven the be a critic of Jefferson Davis and Confederate centralization. Here he appeared to be calling for a “pay as you go” education system but he never clarified who would pay the bills nor how. He argued that the state was in such financial straits and that it could not look to a future educational system but should simply take care of the present needs.³¹

William Fishback offered changes that moved the debate closer to the minority report in some ways. He proposed the creation of a system of common schools but would limit state tax for their funding to two mills on the dollar. This compromise position was much more generous

²⁹ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

³⁰ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

³¹ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

than the Democrats who rejected the statewide distribution of the proceeds of land sales but less generous than the majority report. This proposal was defeated thirty-eight to forty-four. The proposal received four Republican votes and thirty-four Democratic votes. Those Democrats voting for the proposal notably included Frierson, Fishback, and Horner, all men who had spoken in favor of a more generous system.

Some Democrats continued to argue for more funding than this proposal would allow, joining Republicans in opposition to the two-mill limit. Mr. Horner, the Democrat from Phillips County did not want to see local government's hands tied. "Two mills in Helena would not pay for schools but five mills would."³² Horner is arguing that local districts must be allowed to levee local education taxes as well. Former governor Harris Flanagin said "Let the people tax themselves, if they so desire. If a limit is to be fixed at all, let it not be less than five mills."³³ Few Democrats were willing to be as open-handed or generous as Flanagin. Some Democrats supported the use of local taxation, but others are opposed. .

Democratic delegates continued to search for a compromise position that they could coalesce around. William Fishback offered a motion that would set a limit of two mills of state tax but allow school districts to hold elections in order to raise their millage to five mills. Republican delegates were quick to support Fishback's motion. James White of Phillips County, expressed his approval saying, "Let us have the privilege of assessing a tax on ourselves if we so desire otherwise you will hamper and kill our schools."³⁴ Benjamin Johnson, Democrat, from Calhoun County in southeast Arkansas, agreed and thought allowing the people of the state a

³² "The Convention," *Daily Arkansas Gazette*, August 22, 1874.

³³ "The Convention," *Daily Arkansas Gazette*, August 22, 1874

³⁴ "The Convention," *Daily Arkansas Gazette*, August 22, 1874

voice in the decision was the right course of action. Ultimately, the motion by Fishback was adopted sixty-seven to nineteen. The nineteen nay votes all came from Democrats. Gulley, Leiper, and Rector all opposed the motion. While no member provided the secretary with a written explanation of their nay vote, no Democrat had voiced more than general opposition concerning Fishback's two mills of state tax. The sticking point for these nineteen Democrats appears to be local taxation. They apparently thought that five mills would be too high a tax or could be levied by governments elected by local Republican majorities opening the system to mismanagement and wastefulness. Of those nineteen delegates who were opposed to allowing the voters in each school district decide to levy an additional five mills in tax, only three possessed any previous governmental experience. Furthermore, sixteen of these delegates were farmers. These farmers would not take kindly to having their property taxed at higher levels and feared giving such power to the citizenry.³⁵

On August 20 W. W. Mansfield offered a substitute to replace both the majority and minority report. This alternative proposal essentially punted school administration to the legislature. This change was approved in a vote of sixty to twenty-one. While constitution-makers retained some elements of each proposal the substitute offered by Mansfield allowed delegates to wash their hands of the issue of administration. Ultimately, Fishback's two mill limit on state taxation and five mill limit on local taxation remained intact.³⁶

Democratic efforts to find a compromise position proved successful. When the final vote concerning the education article was taken only eleven delegates voted in opposition. All eleven were Republican delegates who did not think the education system the majority was willing to

³⁵ "The Convention," *Daily Arkansas Gazette*, August 22, 1874 "Journal, 432."

³⁶ "The Convention," *Daily Arkansas Gazette*, August 22, 1874.

accept was expansive enough. The final article instructed the state to “maintain a general, suitable and efficient system of free schools.”³⁷ This system was to be open to all Arkansans between the ages of six and twenty-one years of age. Delegates charged the general assembly with paying for the common schools by passing a tax that was never to exceed more than two mills on the dollar on the taxable property of the state. Furthermore, the general assembly would adopt an annual per capita tax of one-dollar payable by every male over the age of twenty-one in the state. There was also the option of local taxation up to five mills. This additional tax revenue would stay in the district where it originated. Lastly, the general assembly was given the discretion to choose who would supervise public schools. The 1868 Constitution had provided a stronger administrative structure while the 1874 Constitution more specifically allowed property taxation, but unlike 1868 it placed strict limitations on that taxation.

It is worth noting that, despite the vigorous debate over taxation for school purposes and the creation of a school system, the state’s newspapers outside of Little Rock (at least the limited number that survive) do seem to have taken part in this debate. For instance, in the papers of northern and western Arkansas (such as the *Fayetteville Democrat*, the *Fort Smith Herald*, the *Weekly Observer* from Pocahontas, the *Jacksonport Herald*, the *Arkansas Statesmen*, both of Jackson County, and the *Southern Standard* from Arkadelphia), where one might expect to find at least a general discussion of the two topics, none exists. It should also be noted that no debate concerning school taxes or the creation of a school system appears in newspapers such as the *Daily Independent* of Helena, the *Prairie County Democrat* of DeValls Bluff, or the *Osceola Times*, all from eastern Arkansas. Nor is there evidence of such debate in the *Arkansas County Enterprise*. The dominant Democratic organ, the *Gazette*, hinted at divisions, though, in

³⁷ “The Convention,” *Daily Arkansas Gazette*, August 22, 1874.

suggesting that the education article as finally agreed to might not be what many Democrats wanted but that failure to embrace free schools would have endangered the passage of the constitution.

That it would be bad policy in a political point of view for it (the convention) to ignore free schools; that free education was the most popular principle in the world; that if this convention, which was overwhelmingly conservative, ignored free schools, it would have the effect of arraying sixty thousand voters in Arkansas against the conservative government; that this opposition would be built on this principle, that the convention had adopted the most liberal principles in other respects, and they must not retrograde in education.³⁸

Arkansas constitution-makers were not drafting a new constitution in a vacuum.

Democrats across the South had to decide what to put in place of Reconstruction school systems.

When it came to funding education, Alabama delegates provided for all funds from the sale of lands granted to the state for educational purposes to go toward funding the education system.

They also provided for an annual poll tax capped at one dollar and fifty cents that was to be used to fund public education in the county where the tax was collected. A school fund of not less

than one hundred thousand dollars per year was to be kept and if the fund fell below that limit

the general assembly was to provide for taxation in order to fund the public schools. Here

Alabama constitution-makers were less definitive about funding the state's education system but

more so when it came school administration. Alabama constitution-makers created the position

of superintendent of education but left future legislatures to set the officer's term of office and

his compensation. In Georgia delegates to the state's 1877 constitutional convention stipulated

that the expenses of this system were to be provided by "taxation, or otherwise." Georgia

constitution-makers opted to create a more centralized education system administrated by a State

school commissioner who was to be appointed by the governor. In Georgia the funding

³⁸ "An Explanation," *Daily Arkansas Gazette*, September 1, 1874.

mechanism was less generous than that provided in Arkansas, meaning they did not provide for local taxation. In fact, constitution-makers provided for a poll tax as well as a tax on liquor and a tax on domestic animals, though not a statewide property tax. In Florida constitution-makers provided for an elected superintendent of public instruction who would hold his office for a term of four years. Florida, like Alabama provided for a stronger administration of the state's education system. When it came to funding the free Florida education system the state would use revenue from all lands granted to the state for education, donations, proceeds of forfeited property, and twenty-five percent of the revenue from the sale of public lands owned by the state but no taxation. Florida constitution-makers were less generous in funding than those that came before them in Arkansas. Constitution-makers in Texas reserved a portion of general tax revenue for education but did not provide for any local taxation for education.³⁹

Delegates had not pared public education to the extent some Democrats wanted or the party's anti-Reconstruction rhetoric might have led many to expect. However, when it came time to govern, Democratic legislators proved distinctly less generous than either their Reconstruction predecessors or their fellow Democrats at the 1874 convention. The general assembly, meeting in a special session, passed "An Act to Maintain System of Free Common Schools for the State of Arkansas" on December 7, 1875. The law made no provision for the property taxation allowed by the constitution. Under this act the proceeds of all lands granted by the United States to Arkansas for the purpose of education, any unclaimed dividends, or the estates of persons who died without heirs along with the regressive one-dollar per capita tax due from every male over the age of twenty-one would be placed in the common school's fund. The act provided for any

³⁹ "An Explanation," *Daily Arkansas Gazette*, September 1, 1874. Georgia Constitution of 1877, Education; Alabama Constitution of 1875; Florida Constitution of 1885; Texas Constitution of 1876.

revenue of the State that the general assembly set apart for education added to this fund, but the general assembly did not levy any tax for this purpose. Legislators opted to keep the position of superintendent of public instruction though appointed by the general assembly. This officer essentially would become that of a record keeper, though few records remain. The head tax was to be collected by the county collector and paid into the county treasury before July 1 of each year. The county court was responsible for distributing school revenue to the several school districts in their county based on the number of persons between the ages of six and twenty-one. Here the poll tax was to be spent locally rather than distributed pro rata statewide. Each school district was required to hold an annual district meeting where they would vote on an additional tax that would be added to their school fund.⁴⁰ Redeemers shifted control and much of the financing of local schools to local control.

The number of schools and districts grew in the state even as spending on education failed to keep up. By allowing but not compelling property taxes to be levied for education, constitution-makers allowed their successors to starve education of funds. Following the ratification of the 1874 Constitution the state permanent common school fund did not fare well. The act passed December 7, 1875, provided for ten percent of the sale of any public lands to be placed in the common school fund. The only problem was that the act did not specify who was to do this. Between 1875 and 1895 more than \$50,000 in school funds were never deposited in the school nor were they ever accounted for. Young Arkansans chances to attend school was limited.

⁴⁰ *Acts, Resolutions, and Memorials of the General Assembly of the State of Arkansas, 1875* (Little Rock: P.A. Ladue, 1876), 54-82.

These schools often lasted no more than five months and were divided into two terms for the purposes of planting and harvesting crops.⁴¹

In 1875, Arkansas had a school age population of 184,692, a slight drop from 1873. In 1875 the state reported 73,878 students enrolled in the school system but only 57.7% or 42,680 students attended school on average. In 1875 the state collected \$352,679 from statewide education taxes and \$428,997 from local taxes. After small amounts from other sources were added, the state had a total education revenue of \$781,676. 1876 would see the school age population hold steady at 189,130 but only 8.4% or 15,890 students were actually enrolled. This supported the assertion of former governor Powell Clayton that Democratic parents withdrew their children from the free school system making it economically infeasible. He claimed that this led to lower pay for teachers forcing many teachers to find work elsewhere. In 1876 statewide revenue stood at \$179,325 and local revenue at \$162,739 for a total of \$342,064. By 1878 little improvement could be seen. There were 216,475 school age students but only 15.5% or 33,747 students were enrolled. While that is roughly double the number enrolled in 1876 it there was not a substantial improvement in funding. State revenue had declined roughly 25% to \$258,355. With funding and administrative decentralized Arkansas also suffered from a disparity between rural and urban schools. While towns and cities often sought a better education system and took steps to fund such a system rural areas were chronically underfunded. Rural areas found it difficult to raise local taxes to help pay for their schools in great part due to lesser resources, less taxable wealth than towns and cities, locals anti-tax sentiment and their lack of commitment to education. Often local schools were not well attended and this was a reflection of the priority

⁴¹ Fletcher Harper Smith, *A History of Public Permanent Common School Funds in the United States, 1795-1905* (New York: Henry Holt and Company, 1911), 219-220.

their parents put on education. This meant that there were few chances for rural children to receive a good education.⁴²

While constitution-makers in 1874 did not produce as restrictive a constitutional article on education as some might have liked, the end result likely remained the same. The state's education system declined from its high point during Reconstruction. Redemption may well have had its most enduring impact in education, the underfunded and decentralized system it established ill served many generations of Arkansans.⁴³

Chapter 9

Conclusion

⁴² Moneyhon, *Arkansas and the New South, 1874-1929* (Fayetteville: University of Arkansas Press, 1997), 74-75.

⁴³ Smith, *A History of Public Permanent Common Schools Funds in the United States*, Powel Clayton, *The Aftermath of the Civil War in Arkansas* (New York: The Neal Publishing Company, 1915), 230-233.

On the afternoon of Monday, September 7, 1874 delegates to the Arkansas Constitutional convention gathered to approve the final draft of their work. The convention had begun in July and labored through the worst of Arkansas's summer heat. When it came to passage of the final document the final vote of 72 ayes, nine nays (all Republicans), and ten abstentions obscures the level of division that existed within the convention. Like Redeemers across the South, Democrats sought to address the abuses, either real or perceived, of Reconstruction. But it is also the case that these men were doing far more, and their efforts continue to affect the way many issues are addressed. The 1874 Arkansas constitution remains in effect today although it has been highly amended. In fact, voters have repeatedly rejected attempts to draft a new Arkansas constitution.¹For this reason, the 1874 constitutional convention remains highly relevant. At times the decisions made in 1874 help to define modern law and legal outcomes in Arkansas. They still have bearing on the make-up of the judicial branch, on what jurisdiction different elements of the judiciary possess, and what level of centralization is evident in government. For instance, the office of governor was fairly weak under the initial 1874 constitution. Thanks to amendments limiting the terms of legislators and giving the governor more control of the budget the governor now has significantly more power, but, with vetos overridden by a simple majority, not as much as many other states'. Another example would be in the state education system. Not until *Lake View* decision (2002) did the supreme court overturn the decentralized school funding

¹ The Arkansas Constitution has been amended more than 90 times since its ratification. There have been three failed constitutional conventions, 1918, 1969, and 1979 (Arkansas voters rejecting their handiwork) as well as failed attempts to call new constitutional conventions.

that Redeemers put in place—by, ironically, citing the language of their constitution guaranteeing a “suitable and efficient” system of schools..²

The premise of this dissertation has been that the history of post-Civil War constitutional change in Arkansas, the South, and the nation as a whole is incomplete without a fresh look at Redemption in states like Arkansas. But what do we understand better about this constitution making when we examine Redemption in Arkansas? First, that Democrats in Arkansas, the South, and the nation were not a monolithic group. In Arkansas, this lack of unity was the product of a Democratic or conservative party that was in reality an assemblage of pre-war Democrats, former Whigs, former Know-Nothings, and a few former Republicans. A second premise is that the 1874 Arkansas Constitution was not as draconian or severe as some Democrats within the convention, the press, and the public would have liked, nor is it as restrictive as scholars have suggested. In fact, upon close examination of the debates and proceedings of the convention there are multiple instances in which the Democratic majority chose the more generous of the options before it. Republicans held too few votes to influence the outcome of most, if not all, of these convention debates. This means that Democrats forced more moderate stances on their fellow Democrats on multiple issues, reinforcing the first point, that these Democrats were not always a harmonious group. Lastly, this dissertation has argued that Redemption in Arkansas was not a purely regional political event. In fact, Southern Redemption was part of a national political change. Like constitution-makers all over the nation, Arkansas constitution-makers struggled with drafting a new constitution that would serve their state’s

² “Journal,” 759; Lake View School District No. 25 v. Huckabee, *Arkansas Encyclopedia of History and Culture*, <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4167>, (accessed, 6-14-2017)

needs while doing away with what were seen as the most egregious “sins” of Reconstruction, or in northern states, the bloated government of the Civil War years.

When other constitutions of the era are examined, they show that there was a significant degree of shared constitutional language. This shared language spanned all regions of the country and was not limited to southern constitution making. While it is well documented in northern and western constitutions of the era, those of the South deserve more analysis. Much work is needed to document the degree to which Redeemer constitutions borrowed from northern and western constitutions, how delegates were influenced by debates within other constitutional conventions, and how they incorporated ideas from their own region as well as from the nation. Still under the watchful eye of the federal government, could southern constitution-makers have thought that employing language from northern constitutions would aid their own work in passing muster with Republican authorities? Constitution making in Arkansas did not happen in isolation, nor was it purely a Southern experience as a reaction to the abuses of Reconstruction. Instead, constitution making in Arkansas is best seen as a combination of regional and national elements.

The Redeemer experience in Arkansas demonstrates that, the Southern Democratic party that would come to dominate southern politics had, in reality, not yet fully formed. While Redeemer constitutions would shape southern governments for generations to come, their party was not yet the hegemonic institution it would become in the twentieth century. The poll tax, the white primary, and Jim Crow were products of the 1890s and 1900s, not 1874. The constitutional provisions that bound taxation and issuance of state bonds the tightest were the products of the 1920s and 1930s.³ The constitutional convention also provides only a starting point to understand

³ Arkansas Constitutional Amendments 19 and 20.

the development of the Southern Democratic Party that would come to dominate the region—and dominate Congress in a disproportionate fashion, fighting civil rights but enacting the New Deal.⁴

⁴ See: Ira Katznelson, *Fear itself: The New Deal and the origins of our time*, (New York: W. W. Norton: 2013).

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